

Committee for Education

Report on the Education Bill (NIA 14/11-15) Volume One

**Together with the Minutes of Proceedings, Minutes of Evidence
and Written Submissions relating to the Report**

**Ordered by The Committee for Education to be printed on 8 April 2013
Report: NIA 106/11-15 Committee for Education**

Powers and Membership

Powers

The Committee for Education is a Statutory Departmental Committee of the Northern Ireland Assembly established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48 of the Northern Ireland Assembly.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of Education.

Membership

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee is as follows:

Mervyn Storey (Chairperson)
Danny Kinahan (Deputy Chairperson)^{1, 2}
Michaela Boyle
Jonathan Craig
Jo-Anne Dobson
Brenda Hale
Chris Hazzard³
Trevor Lunn
Michelle McIlveen
Pat Sheehan⁴
Sean Rogers⁵

1 With effect from 31 January 2012 Mr Mike Nesbitt replaced Mr David McNarry
2 With effect from 17 April 2012 Mr Danny Kinahan replaced Mr Mike Nesbitt as Deputy Chairperson
3 With effect from 10 September 2012 Mr Chris Hazzard replaced Mr Phil Flanagan
4 With effect from 10 September 2012 Mr Pat Sheehan replaced Mr Daithi McKay
5 With effect from 23 April 2012 Mr Sean Rogers replaced Mr Conall McDevitt

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Executive Summary

The overall purpose of the Education Bill is ‘to provide for the establishment and functions of the Education and Skills Authority; to make further provision about education, education services and youth services; and for connected purposes’.

The Committee Stage scrutiny of this Bill included consideration of written submissions from 71 organisations; 13 oral evidence sessions and a further 2 informal evidence sessions.

ESA as the employer / single employing authority

A number of clauses and schedules of the Education Bill deal with ESA’s proposed role as employer of all staff in grant-aided schools.

The Department advised that Clauses 3 and 34 which reference the Heads of Agreement could not be operated owing to contradictions within the Heads of Agreement. Specifically, part 5 of the Heads of Agreement indicates that ESA is to be “the single employing authority for all staff in grant-aided schools” while part 10c indicates that where “it is already the case, Boards of Governors will continue to employ and dismiss members of staff”.

The Committee understood that amendments would be required for these clauses. The Committee therefore wrote to the Minister and OFMDFM in January, February and again in March seeking amendments to the Bill or to the Heads of Agreement so as to resolve the problems set out by the Department. The Committee did not receive amendments to the relevant clauses of the Bill or clarification in respect of the wording of the Heads of Agreement. In the absence of responses from the Minister and OFMDFM, the Committee agreed to reserve its position on Clauses 3 and 34.

Additionally a majority of Members felt that all of the clauses and schedules which touch upon ESA’s role as the single employing authority could not be properly scrutinised until these amendments were provided. The Committee therefore agreed to reserve its position on all clauses and schedules (Clauses 4 to 11; 19, 31, 32, 33, 35 to 37; 62 and Schedules 2 to 5) which deal with ESA’s role as the single employing authority for all staff in grant-aided schools.

The Department advised that Clause 13 was designed to allow for the development of a revision to the Education (Modification of Statutory Provisions Relating to Employment) Order (NI) 1991. The Department indicated that a new Order made under Clause 13 is required so that employment law can be modified such that the body which carries out employment functions does so legally.

Clause 13 underpins ESA’s role as the single employing authority of all staff in grant-aided schools. The anticipated regulations are expected to provide much-needed clarity on the relationship between ESA and Boards of Governors in respect of employment matters. In the absence of clarity on these important regulations, Members felt that they should also reserve their position on Clause 13.

Autonomy of schools

Some Members argued that the Bill undermines the autonomy of Voluntary Grammar (and Grant Maintained Integrated) schools. They argued that additional provisions were required to guarantee autonomy and that these should be extended to include schools in other sectors e.g. Controlled Grammar schools which had the capability to manage a higher level of delegation.

Other Members disagreed, indicating that the Bill allowed schools to continue as they are or to seek greater autonomy if they wish and that additional provisions were unnecessary.

As there were significant differences of opinion, the Committee agreed to reserve its position in respect of Clause 12 which deals with salary arrangements in schools.

Some Members also argued that in order to maintain the autonomy of schools, a sectoral body to represent Voluntary Grammar schools and appropriate representation on the Board of ESA was required.

Other Members again disagreed, arguing that the Bill provides for appropriate representation for all educational sectors.

As there were significant differences of opinion, the Committee reserved its position on Clause 63 and Schedule 1.

Irish Medium / Integrated Education

The Committee sought legal advice as to the Department's current obligations in respect of Integrated Education and Irish Medium Education.

Some Members strongly opposed provisions relating to the promotion of Irish Medium or Integrated Education arguing that they provided unwarranted assistance for certain forms of education which would lead to disadvantage for other sectors – particularly the Controlled sector.

Other Members strongly argued that without additional and proportionate support for Irish Medium Education, the development of a culturally important educational sector would be stifled with far-reaching ramifications in respect of equality and fairness in education. Those Members supported the relevant provisions in the Bill.

A Member also strongly argued that support for Integrated Education was essential to ensure the development of this popular sector in line with parental preference and that failure to do so would in itself be unfair and lead to inequality.

As there were significant differences of opinion, the Committee reserved its position on Clauses 2, 39 and 41. The Committee again reserved its position on Schedule 1 which deals with representation of educational sectors on the Board of ESA.

Area Planning

Some Members highlighted concerns that the Area Planning clauses provided a new and unfettered power to the Department in respect of the development and imposition of Area Plans. Other Members disputed this and argued that the provisions did not greatly alter the current position in respect of Area Planning.

The Committee highlighted concerns in respect of the impact of school closures in rural areas driven by Area Plans. Members strongly felt that there should be protections for strategically important schools which play a vital role in the life of rural communities. The Committee felt that rural-proofing of Area Plans would provide much-needed essential protection for rural communities.

The Committee therefore agreed to make the following recommendation:

The Committee recommends that Area Plans be subject to rural-proofing and that ESA should give proper consideration to the impact on small communities of school closures in rural areas.

The Committee also recognised the crucial importance of consultation in ensuring transparency in respect of the Area Planning process. The Committee therefore agreed to make the following recommendation:

The Committee recommends that a duty be placed on ESA to consult with relevant stakeholders on Area Plans. As a minimum, the Committee expects this to include

those stakeholders identified in Clause 28(5) and including in particular the Boards of Governors of all grant-aided schools including Controlled schools; parents; providers of youth services; the staff of grant-aided schools and their representatives; and sectoral bodies.

As significant differences of opinion persisted in respect of the Department's powers relating to Area Planning, the Committee agreed to reserve its position on Clauses 24 to 30.

Measures of Achievement

In respect of Clause 38, the Committee considered the important role that Boards of Governors play in promoting the achievement of high standards of educational attainment. The Committee strongly felt that many good schools provided a value-added educational experience for children which might not always translate into the highest standards of academic success. The Committee believed that more work needed to be done to ensure that the value-added by schools and Boards of Governors to children's education is better understood. The Committee therefore agreed the following recommendation:

The Committee recommends that the Department undertakes further study on how educational value is added by schools. To that end, the Department should consider the development of measures of achievement for pupils and schools which would complement the existing measures which are based on academic success.

Inspections

Some Members suggested that clauses referencing inspections should not be included in the Bill at all.

The Committee noted the Department's clear assertion that the Education and Training Inspectorate (ETI) was part of the Department and would therefore be part of the mechanism through which Departmental policy would be applied. Some Members felt that the absence of independent control and management of the ETI would prevent reasonable and valuable criticism of Departmental policy. These Members felt that current arrangements prevent ETI from fulfilling its proper role as a critical friend to schools and independent partner in the school improvement process.

The majority of Members therefore agreed the following recommendations:

The Committee recommends that the Department should bring forward legislation which will make the Education and Training Inspectorate a fully independent body which can act as the critical friend and independent improvement partner for all schools.

The Committee recommends that the Department should bring forward at the earliest opportunity measures to enhance the transparency of the Education and Training Inspectorate including a statutory complaints procedures and appeals process.

As there were significant differences in opinion in respect of the powers of the inspectorate and the appropriateness of the inclusion of clauses relating to inspections in this Bill, the Committee agreed to reserve its position in respect of Clauses 44 to 48.

Council for the Curriculum, Examinations and Assessment (CCEA)

Some Members of the Committee expressed concerns that there was an inherent conflict of interests as CCEA was an examining body and also the examinations regulator.

Consequently and in the absence of a satisfactory resolution to these concerns and concerns relating to the appropriateness of the inclusion of clauses relating to CCEA in the Bill, the Committee agreed to reserve its position in respect of Clauses 50 to 54.

Shared Education

Members noted many references in stakeholder submissions to the promotion of collaboration between schools and the facilitation of Shared Education.

Some Members felt that the Department should not miss an opportunity to promote the more efficient use of resources which would be for the betterment of the educational experience for pupils by including duties in the Bill on ESA (and/or the Department and/or sectoral bodies etc.) to promote or facilitate Shared Education. Others felt that in the absence of clarity on the Department's policy position with regard to Shared Education, it would be ill-advised to amend the Bill in this regard.

The Committee decided that although it felt that collaboration between schools should be facilitated, the absence of policy clarity would militate against amendments to the Bill.

The Committee therefore agreed to make the following recommendation:

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 education to the betterment of the educational experience for pupils.

The Committee also agreed to seek a Ministerial assurance at Consideration Stage that the Department would implement the Committee's recommendation.

Revised Definitions

Members noted possible Ministerial amendments which would alter or clarify the definition of a "Catholic school" and an "Irish speaking school" or "Irish speaking unit".

As the Committee was not given sight of the relevant amendments, the Committee agreed to reserve its position in respect of Clause 63 and Schedule 7.

Other Issues

The Committee noted a proposed amendment which would allow Transferors to retain their representation on a Board of Governors when a Controlled school merges with a Controlled grammar and chooses to keep a grammar school ethos.

As questions in respect of Transferors' nominations to Boards of Governors of certain merged Controlled schools remain unresolved, the Committee agreed to reserve its position in respect of Clause 41.

Amendments

The Committee agreed to recommend the following amendments to the Assembly.

In order to ensure consultation with all relevant sectoral bodies with regard to the establishment of new Controlled schools, the Committee agreed that it would recommend to the Assembly that Clause 18 be amended in the terms set out below:

Clause 18, page 11, line 5, add:

"in consultation with the relevant sectoral bodies - "

In order to restrict the ancillary powers of ESA, the Committee agreed that it would recommend to the Assembly that Clause 22 be amended in the terms set out below:

Clause 22, page 12, line 19

Leave out from the start of line 19 to “particular” in line 22 and insert -

‘For the purposes of discharging its functions,’

Clause 22, page 12, line 29

At end insert -

() The Department may by order amend subsection (1).

In order to restrict ESA's commercial activities, the Committee agreed that it would recommend to the Assembly that Clause 23 be amended in the terms set out below:

Clause 23, page 12

Leave out lines 41 and 42

Clause 23, page 13, line 27

At end insert -

‘(9) The Department may by order amend the powers granted to ESA under this section.’

Consequential to the above, the Committee agreed to recommend to the Assembly that Clause 65 be amended such that regulations made under Clauses 22 and Clause 23 should be subject to affirmative resolution.

The Committee agreed that although it was to reserve its position on clauses relating to Area Planning, it agreed to recommend to the Assembly an amendment to Clause 65 which would require regulations issued in respect of Area Planning to be subject to affirmative rather than negative resolution.

The Committee also agreed to support in principle Ministerial amendments in respect of: consultation relating to guidance on employment and management schemes and relating to the revision of employment and management schemes; the transfer of all responsibilities to OFMDFM for the Tribunal; a requirement for the inspectorate to share inspection reports with sectoral bodies; and a change such that Transferors will not be restricted to feeder primary schools when choosing governors for Controlled post-primary schools.

The Committee also agreed to support in principle amendments from the Minister of Employment and Learning which would extend the statutory inspection regime to private providers of further and higher education.

The Committee agreed to support a drafting amendment to Clause 69 which will give the Short Title of the Bill as the Education Act (Northern Ireland) 2013.

Agreement of clauses and schedules

As further amendments are required from the Department, where it has agreed a clause or schedule, the Committee has done so subject to consequential amendment.

The Committee agreed that it was content with the following clauses and schedules as drafted, subject to consequential amendment: Clauses 1, 14 to 17, 20 (subject to a Ministerial assurance), 21, 38, 40, 42, 43, 49, 55 to 61, 64, 66 to 68 and Schedules 6 and 8.

Delegated Powers

The Committee agreed that it was generally content with the level of scrutiny associated with the delegated powers in the Education Bill as currently drafted with the exception of those clauses about which it had reserved its position and those amendments in respect of Clauses 22, 23 and 30 as indicated above.

Introduction

1. The Education Bill (NIA 14/11-15) (the Bill) was introduced to the Assembly on 2 October 2012 and referred to the Committee for Education for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 15 October 2012. At introduction the Minister for Education (the Minister) made the following statement under Section 9 of the Northern Ireland Act 1998:

“In my view the Education Bill would be within the legislative competence of the Northern Ireland Assembly.”

2. The Education Bill (NIA 14/11-15) states its overall purpose as ‘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’. The Bill’s Explanatory and Financial Memorandum (EFM) sets out at paragraphs 8 to 17 the purpose of the Bill and a summary of its main provisions.

Second Stage of the Education Bill

3. The Chairperson of the Committee for Education at the Second Stage debate on the Education Bill highlighted that the majority of Committee Members were probably “just about content to allow the Bill to go to Committee Stage”. He indicated that the Committee felt that the Bill included new checks and balances which were sufficiently different from previous legislation to warrant further scrutiny and possible amendment at the Committee Stage.
4. The Chairperson outlined key areas of interest within the Bill as follows:
 - The Heads of Agreement (referenced in clause 3 and 34) which indicated that there is to be no change in school ownership which negatively affects the role of Boards of Governors of schools including the way in which Boards of Governors are appointed and that the current arrangements under which Boards of Governors “hire and fire” their staff are to be unchanged. Additionally, the Heads of Agreement set out that there is to be no transfer; secondment or redeployment of teachers without the consent of schools and Boards of Governors. The Chairperson highlighted the Committee’s expectation that aspects of the Heads of Agreement included within the clauses or the schedules of the Bill would be subject to amendment.
 - The independent Tribunal which is to rule on disputes relating to employment schemes and schemes of management. The Chairperson indicated the Committee’s expectation that this body would act as a check on the authority of ESA in respect of its dealings with Boards of Governors and other submitting authorities.
 - The dissolution of the Education and Library Boards and the Council for Catholic Maintained Schools and the new role for sectoral support bodies in the regulatory regime.
 - Provisions relating to the Irish Medium sector which the Department advised were intended to bring ESA’s responsibilities to promote Irish Medium Education into line with the Department’s responsibilities and to recognise the special curriculum needs of Irish Medium Education.
 - The enhancement of inspection powers in schools which are to be made available to the Education and Training Inspectorate.
 - The balance of the Bill in respect of proposed enhanced delegation and autonomy for schools set against a revised regulatory regime in which ESA would be the employing authority for all staff in grant-aided schools.

Committee Stage of the Education Bill

5. The Committee had before it the Education Bill (NIA 14/11-15); the Explanatory and Financial Memorandum that accompanied the Bill; the delegated powers memorandum prepared by the Department and the Heads of Agreement issued by OFMDFM.
6. Following introduction of the Bill to the Assembly, the Committee wrote on 3 October 2012 to key education stakeholders including all Boards of Governors in Northern Ireland. The Committee also inserted notices in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill by 16 November 2012.
7. 71 organisations responded to the request for written evidence and copies of these submissions received by the Committee are included at Appendix 4.
8. During the period covered by this Bill Report, the Committee considered the Bill and related issues at 17 of its meetings. The relevant extracts from the Minutes of Proceedings for meetings, as appropriate, are included at Appendix 1.
9. At its meeting of 14 November 2012, the Committee agreed a draft Motion to extend the Committee Stage of the Bill to 8 April 2013. The draft Motion was designed to allow stakeholders to consider the Bill and formulate their responses and to set aside enough time for the scrutiny of the clauses and schedules of the Bill by the Committee.
10. On 26 November 2012, the Assembly agreed to extend the Committee Stage of the Bill to 8 April 2013.
11. As outlined above, the Committee received approximately 78 written responses from education stakeholders in response to its letter and public notice inviting written submissions to the Bill. Stakeholders were asked to structure written submissions to address specific clauses of the Bill and its schedules.
12. From 21 November 2012 to 6 February 2013, the Committee took oral evidence from selected stakeholders who had submitted written evidence. These included:
 - Northern Ireland Teaching Council; National Association of Head Teachers; Association of School and College Leaders (28 November 2013);
 - Transferors' Representative Council; Integrated Education Fund and Northern Ireland Council for Integrated Education; Comhairle na Gaelscoileachta. (5 December 2012);
 - Governing Bodies Association (12 December 2012);
 - Northern Ireland Commission for Catholic Education and Council for Catholic Maintained Schools; Western Education and Library Board (9 January 2013);
 - Catholic Heads Association (16 January 2013);
 - Association of Controlled Grammar Schools; Northern Ireland Voluntary Grammar Schools Bursars Association (23 January 2013); and
 - Northern Ireland Youth Forum (6 February 2013).
13. All stakeholder written submissions are available at Appendix 4. Both stakeholders and Departmental officials answered Members' questions after their individual sessions - as reflected in the Minutes of Evidence for each of these meeting sessions (extracts reproduced at Appendix 2), Departmental officials were requested to provide specific follow-up information to the Committee – these are reproduced at Appendix 3.
14. The Committee also facilitated a Call for Evidence event on 30 January 2013 with a parents/teachers group (PTA-NI) and the Youth Forum – a note of the issues raised is included at Appendix 5. Additionally Members met with representatives of NIPSA, Unison and the General,

Municipal, Boilermakers and Allied Trade Union (GMB) on 25 February 2013 to discuss the non-teaching unions' concerns in respect of the Bill. A written submission covering the issues raised is included in Appendix 4.

15. The Committee also noted responses on relevant clauses and schedules from the Committee for Employment and Learning and the Committee for Culture, Arts and Leisure.
16. The Committee commenced its clause by clause consideration of the Bill on 6 February and this continued at all of its meetings until 20 March 2013.
17. To assist the Committee with its scrutiny on the individual clauses and schedules of the Bill, the Committee received advice from the Assembly's Examiner of Statutory Rules. The Committee also received advice on several subjects from Assembly's Legal Services. Assembly Research and Library Services also provided the Committee with research papers on specific subject areas. During the clause-by-clause scrutiny sessions, the Committee requested Departmental officials to clarify any points Members had on individual clauses and schedules.
18. The Committee approved the Appendices to this Report on the Education Bill at its meeting on 4 April 2013.

Report on the Education Bill

19. At its meeting on 4 April 2013, the Committee agreed its Report on the Bill and agreed that it should be printed on 8 April 2013.

Section 2

Consideration of the Bill

Section 2 of this report contains the details of the Committee's 'Consideration of the Bill', either by individual clause or by groups of clause lines and schedules of the Bill, where concerns and issues arose.

Members and other readers of this report may wish to refer to Section 3 where the Committee's decisions in respect of clauses, schedules and amendments are set out.

Part 1: The Education and Skills Authority

Clause 1: The Education and Skills Authority

1. Clause 1 creates the Education and Skills Authority (ESA) and applies Schedule 1 which sets out the detail on membership of the Board of ESA; ESA's operation and procedures including the establishment of Committees.
2. A number of stakeholders wrote to the Committee suggesting, for various reasons, that ESA should be renamed. One stakeholder argued that as ESA is to have no remit to promote skills, it should be renamed as the Education Authority.
3. Members accepted the Departmental response that the inclusion of the word "Skills" was intended to reflect the important role of schools in the delivery of the skills-based part of the curriculum.
4. The Committee agreed it would not take forward amendments in respect of Clause 1.

Shared Education

5. Members noted numerous references by stakeholders to Shared Education firstly in Clause 2 but also in many other clauses. In this clause, as with some others, stakeholders suggested that there should be a duty on ESA or the Department or sectoral bodies to promote Shared Education or collaboration between schools and educational bodies so as to facilitate Shared Education.
6. The Committee noted explanations from the Department that the Shared Education Advisory Group was not due to report until April and that this may be followed by a period of consultation as to the definition of Shared Education.
7. Some Members felt that the Department should not miss an opportunity to promote the more efficient use of resources which would be for the betterment of the educational experience for pupils by including duties in the Bill on ESA (and/or the Department and/or sectoral bodies etc.) to promote or facilitate Shared Education. Others felt that in the absence of clarity on the Department's policy position with regard to Shared Education, it would be ill-advised to amend the Bill in this regard.
8. The Committee therefore decided that although collaboration between schools should be facilitated, the absence of policy clarity would militate against amendments to the Bill. The Committee therefore agreed to make the following recommendation:

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 education to the betterment of the educational experience for pupils.

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9. The Committee also agreed to seek a Ministerial assurance at Consideration Stage that the Department would implement the Committee's recommendation.

Clause 2: Functions and general duty of ESA

10. Clause 2 places a duty on ESA to contribute to the development of children, young people and thereby to the community at large. ESA is also required to co-ordinate the planning, and delivery of schools, educational services and youth services with a view to promoting the achievement of high standards of educational attainment. ESA is required to also encourage and facilitate the development of education "in an Irish speaking school".
11. Some stakeholders suggested changes to the Bill which would require ESA, in addition to the spiritual, moral, cultural, social, intellectual and physical development of children and young people, to also promote Shared Education and linguistic development.
12. NIPSA suggested that ESA should not promote the spiritual development of children and young people. The Transferors' Representative Council (TRC) argued that the clause should include the provision for an appropriate level of curricular support to accompany the commitment to promote spiritual development.
13. A number of stakeholders referred to Clause 2(5) which deals with encouraging and facilitating Irish Medium Education. The Governing Bodies Association (GBA) sought changes to the Bill which would explicitly confine the promotion of Irish Medium Education to Irish speaking grant-aided schools. Other proposed amendments would require ESA to also promote Integrated Education and faith-based education in line with parental choice or to include explicit assurances within the Bill in respect of equality in education.
14. Some Members raised general concerns about the unequal treatment experienced by the Controlled sector. Those Members sought assurances that all sectors would be treated equally; that a level playing field would be in operation in respect of administrative and other forms of support. Those Members noted Departmental assurances that enhanced delegation measures contained within the Bill would ensure that the Controlled sector - which in their view had been historically neglected - would experience more equal treatment from ESA following the passage of the Bill.
15. The Committee noted legal advice on Clause 2(3) which requires ESA to treat schools on the same basis regardless of whether their premises are vested in ESA or not. The Committee considered the possible tension between this clause and the Department / ESA's commitments in respect of Integrated and Irish Medium education. The Committee also received legal advice on the interaction of Clause 2(3) with ESA's Area Planning responsibilities set out in Clauses 24 to 30.
16. Some Members also suggested that there was a contradiction between Clause 2(3) and Clause 20 (ESA to contract for certain works). It was argued that as ESA must obtain the agreement of the school owners before entering into contracts there would be a clear difference in the treatment of Controlled schools (whose owner is ESA) and say Voluntary Grammar schools (whose owners are their trustees).
17. Members welcomed the ongoing development of a Controlled Sectoral Support Body and highlighted their expectation that this and other sectoral support bodies would be consulted as appropriate by ESA on all relevant matters.
18. The Committee sought legal advice as to the Department's current obligations in respect of Integrated and Irish Medium education and how Clause 2(5) would change this in respect of the latter. The Committee noted the Department's explanation that the additional duties on ESA in respect of Irish Medium Education were required so as to allow the provision by ESA of a necessary additional level of curriculum support. The Committee also noted the Minister's

intention to bring forward an amendment which would replicate the provisions of Clause 2(5) for Integrated Education.

19. Members commented as regards ESA's responsibilities for Irish Medium and other forms of education. Some Members strongly opposed the inclusion of Clause 2(5) arguing that the provision provided unwarranted assistance for a form of education which would only ever be popular with a very small minority of the school population. Those Members also opposed additional provisions to support Integrated Education citing possible disadvantage for the Controlled sector.
20. Other Members strongly argued that without additional and proportionate support for Irish Medium Education, the development of a culturally important educational sector would be stifled with far-reaching ramifications in respect of equality and fairness in education. Those Members supported in principle the Minister's amendment to extend additional support to Integrated Education in line with Irish Medium Education arguing that the Minister's amendment was a necessary recognition of the importance and particular needs of the Integrated Education sector.
21. The Committee agreed that ESA's general duties should not be amended to include further duties relating to linguistic development (as suggested by CnaG) as this was already covered by the duty to promote the intellectual development of children.
22. Some Members strongly felt that ESA should be required to promote faith-based education and that there should be a requirement for ESA to uphold equality in educational provision in line with parental preference. The Committee noted Departmental explanations that there was general duty on ESA and the Department to promote the education of all children and young people in Northern Ireland.
23. The Committee obtained written information from the Department in respect of its responsibilities linked to religious education. The Committee noted the Department's argument that commitments in respect of support for the delivery of the religious education curriculum should not be included on the face of the Bill. The Committee felt that ESA should promote the spiritual development of children. However some Members also strongly felt that in the spirit of TRC's submission, ESA should be required to take steps to enhance support for the religious education curriculum.
24. In the absence of agreement on issues relating to the facilitation and encouragement of Irish Medium Education and Integrated Education and because of concerns expressed by some Members relating to the possible absence of equality between educational sectors, the Committee agreed to reserve its position on Clause 2.

ESA as the employer / single employing authority

25. Clauses 3 to 13; 33 to 37; and 62 of the Education Bill refer to ESA's role as employer of all staff in grant-aided schools. The clauses refer to schemes of employment and schemes of management. The Committee noted draft model employment and management schemes in Appendix 3.
26. Some Members strongly felt that ESA's role as single employing authority and its involvement in the approval of schemes of employment (and management) would deprive well-run and appropriately governed Voluntary Grammar and Grant Maintained Integrated schools of the autonomy which they needed to continue to deliver good value, high attainment education to a large percentage of the school population. It was further argued that where other schools e.g. Controlled Grammars had developed the capacity to manage their own employment and financial affairs, the Bill should facilitate an enhanced level of autonomy in line with the Voluntary Grammars and Grant Maintained Integrated schools.

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27. These Members argued that – contrary to the recommendations of the independent review of the Common Funding Scheme – the Bill would not ensure the maintenance of the enhanced levels of autonomy experienced by Voluntary Grammar and Grant Maintained Integrated schools. These Members argued that educational studies showed that this higher level of school autonomy would lead to improved academic performance and that this would serve to support the relevant Programme for Government targets to improve attainment and tackle underachievement among socially deprived school children.
 28. Members noted suggestions from stakeholders for amendments permitting certain groups of schools to opt out entirely or in part from the employment arrangements relating to ESA. Members also noted suggestions - from the Governing Bodies Association (GBA), as part of a series of amendments - that ESA act as the agent for Boards of Governors in Voluntary Grammar schools in respect of employment matters. Stakeholders had argued that this would allow the Bill to give effect to the Heads of Agreement and thus allow ESA to be the employer of all staff while Boards of Governors of Voluntary Grammars continued to employ, dismiss etc. their teachers and other staff as they have always done. The Committee considered legal advice on this matter.
 29. Some Members robustly set out the view that the Bill adequately supports and protects an appropriate level of autonomy for schools which will underpin Departmental policy and therefore better attainment in schools. These Members did not at all support the suggestions made by the Voluntary Grammar schools that the Bill undermines their ability to deliver education in the context of the voluntary ethos. These Members also strongly argued that the clarification provided by the Department in respect of the draft model employment (and management) schemes established that schools would continue to operate as they have always done, unless they or their submitting authority wish to seek further autonomy. These Members contended that the Bill properly balanced more autonomy for schools with an appropriate level of accountability and all for the betterment of the educational experience of pupils.
 30. The Department advised that those clauses which reference the Heads of Agreement (clauses 3 and 34) could not be operated owing to contradictions within the Heads of Agreement. Specifically, part 5 of the Heads of Agreement indicates that ESA is to be the single employing authority for all staff in grant-aided schools while part 10c indicates that where “it is already the case, Boards of Governors will continue to employ and dismiss members of staff”.
 31. Members considered submissions from the Northern Ireland Commission for Catholic Education (NICCE) and the Council for Catholic Maintained Schools (CCMS) which argued for the removal of references to the Heads of Agreement throughout the Bill as it was suggested that this document was not suited to legislative purpose.
 32. The Committee wrote to OFMDFM and the Minister in January, February and again in March seeking amendments to the Bill or to the Heads of Agreement so as to resolve the problems set out by the Department. The Committee did not receive amendments to the relevant clauses of the Bill or clarification in respect of the wording of the Heads of Agreement.
 33. The Committee noted the draft model employment (and management) schemes which were provided by the Department and which sought to clarify issues in respect of the autonomy of schools. The Committee also noted that the Department is to revise the Education (Modification of Statutory Provisions Relating to Employment) Order (Northern Ireland) 1991 which sets out the delegated nature of employment in schools and e.g. allowed (in the case of Catholic Maintained Schools) a Board of Governors to be the de facto and de jure employer while the Council for Catholic Maintained Schools remained the employing authority.
 34. A majority of Members strongly felt that necessary clarification on the role of ESA as sole employer or single employing authority had not been provided. A majority of Members felt that this important issue had to be resolved before the Committee could properly determine
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its position on clauses and schedules relating to employment (and management) schemes. It should be noted however that some Members disagreed and argued that there was no material contradiction in the Heads of Agreement and that the new arrangements in respect of delegated employment scarcely differed from the present situation. These Members suggested that any possible difficulties could be resolved through regulations.

35. In the absence of responses from the Minister and OFMDFM, the Committee agreed to continue with its scrutiny of the other clauses and schedules of the Bill and to reserve its position on those clauses and schedules which reference ESA's role as the single employing authority or employer of staff in grant-aided schools.

Clause 3: ESA to employ all staff of grant-aided schools

36. Clause 3 makes ESA the employer of all staff in grant-aided schools. The clause defines the term "submitting authority" – in the case of voluntary schools for example this clause makes the trustees the submitting authority. The clause requires trustees to consult with Boards of Governors and allows Boards of Governors to refer an employment scheme to a Tribunal to test its compatibility with the Heads of Agreement. The clause also gives Boards of Governors a right to refer an approved scheme to a Tribunal for a test of compatibility with the Heads of Agreement.
37. GBA suggested that Voluntary Grammar schools be given the option of opting out of the employment relationship with ESA. As part of a series of amendments, GBA also suggested that ESA should act as the agent of Boards of Governors of Voluntary Grammar schools.
38. Comhairle na Gaelscolaochta (CnaG) – sought an amendment which would make the trustees of Irish Medium schools the submitting authority unless they nominated the Board of Governors. The Committee noted Departmental explanations that Controlled IME schools do not have trustees and that, for Voluntary IME schools, the Bill already defines the submitting authority as the trustees.
39. NICCE and CCMS proposed amendments so as to remove Clause 3(5) which references the admission criteria operated by Boards of Governors – arguing that this was set out in other legislation. The Northern Ireland Commissioner for Children and Young People (NICCY) argued that the Bill should include explicit reference to post-primary transfer. The majority of Members felt that the references to Boards of Governors' discretion in respect of admission policy should not be amended in Clause 3.
40. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and given also the Department's advice that the clause is inoperable as drafted, the Committee agreed to reserve its position in respect of Clause 3.

Clause 4: Employment schemes for grant-aided schools

41. Clause 4 provides for employment schemes in all grant-aided schools. The clause indicates that the employment scheme will identify specified posts – i.e. those posts to be appointed by ESA. The clause requires each scheme to be consistent with the management scheme of the school; education legislation and any instrument of governance of a school. The employment scheme must include provisions set out in Schedule 2 – including dismissal and suspension arrangements and determination of the staff complement. The employment scheme must have regard to guidance issued by the Department under Clause 5 of the Education Bill.
42. The Irish National Teachers Organisation (INTO) suggested an amendment which would compel schemes of employment to comply with existing arrangements and procedures in schools. The Sharing Education Partnership (SEP) suggested an amendment which would oblige employment schemes to facilitate the sharing of staff and other resources. GBA

argued that Voluntary Grammar schools should be exempt from the provisions relating to employment schemes; that the Department should not be able to alter Schedule 2 through regulations and in line with a number of other amendments that ESA should act as the agent of Boards of Governors in Voluntary Grammar schools in employment matters.

43. The Committee agreed that it supported in principle measures to enhance sharing between schools where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
44. The Committee noted Departmental assurances that it was anticipated that the introduction of employment schemes would not lead to changes to terms and conditions and employment arrangements without the agreement of staff and trade unions. The Department suggested that in the longer term and with the agreement of staff representatives, it may be that there will be enhanced uniformity of conditions of employment across all educational sectors.
45. The Committee noted Departmental explanations that it was usual for alterations to the provisions of Schedule 2 to be through regulations which would be subject to Committee scrutiny and require the agreement of the Assembly.
46. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question, the Committee agreed to reserve its position in respect of Clause 4.

Clause 5: Preparation and approval of employment schemes

47. Clause 5 requires the preparation of employment schemes in all grant-aided schools by the submitting authority. The clause requires ESA to approve the scheme unless it does not meet statutory requirements. If a scheme does not meet statutory requirements, ESA must seek to agree modifications with the submitting authority. Where agreement can not be reached, ESA must refer the scheme to a Tribunal. The Department may, with OFMDFM approval, issue guidance containing model schemes. Where schemes differ from model schemes, submitting authorities must submit additional information as required to ESA.
48. NIPSA put forward suggested amendments which would require submitting authorities to use identical or model employment schemes with limited variations. The stakeholder argued that this would ensure equality of treatment for all staff in different schools. NIPSA also suggested amendments which would require consultation with trade unions prior to the development of model schemes or actual employment schemes or the amendment of actual employment schemes. TRC argued for consultation with sectoral support bodies in respect of the development of model schemes to be included as a requirement in the Bill. Other stakeholders suggested that the Bill should require employment schemes to be standardised, public documents which would ensure that all teaching and non-teaching staff were subject to identical terms and conditions regardless of the sector in which they worked.
49. The Committee noted that the Minister is expected to bring forward amendments which will require consultation with trade unions and the relevant sectoral bodies prior to the production of guidance on model schemes and a requirement to consult with trade unions prior to the submission of a revised employment scheme. The Committee also understood that the Minister is to bring forward an amendment which will require copies of employment schemes to be made available on demand to staff.
50. The Committee noted draft model employment and management schemes. The Committee agreed that it supported in principle the Minister's proposed amendments which require consultation and publication in respect of employment schemes.

51. The Committee noted that although the issuing of guidance by the Department is subject to approval by OFMDFM, it is not subject to Committee scrutiny or agreement by the Assembly. Some Members suggested that guidance should only be issued as part of regulations which would be subject to the affirmative resolution procedure.
52. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 5.

Clause 6: Reserve power of ESA to make an employment scheme

53. Clause 6 allows ESA to submit an employment scheme on behalf of a submitting authority where the submitting authority fails to do so or where it asks ESA to do so. The clause requires ESA to consult with the submitting authority before making the scheme in this case.
54. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 6.

Clause 7: Revision of employment schemes

55. Clause 7 requires a submitting authority to resubmit its employment scheme if revised guidance is issued by the Department (subject to approval by OFMDFM). The clause also permits a submitting authority to revise and resubmit its employment scheme at any other time.
56. As indicated above, the Committee noted that the Minister is expected to bring forward amendments which will require consultation with trade unions prior to the submission of a revised employment scheme.
57. Also as indicated above, the Committee agreed that it supported in principle the Minister's proposed amendments which require consultation in respect of revised employment schemes.
58. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 7.

Clause 8: Procedure where ESA does not approve a submitted scheme

59. Clause 8 provides for consideration by the Tribunal of an employment scheme which ESA will not approve. The clause indicates that the Tribunal may order ESA to approve such a scheme or it may require ESA to approve the scheme with modifications. Furthermore, the clause allows the Tribunal to make a new scheme for the school in question. During the interim period before the Tribunal makes an order, the scheme in force continues to have effect. However the clause permits ESA to apply to the Tribunal to make modifications to the scheme which applies in the interim period.
60. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 8.

Clause 9: Effect of employment scheme

61. Clause 9 requires the Board of Governors of a school to give effect to its employment scheme. The clause requires ESA to give effect to a Board of Governors' decision which complies with its employment scheme. Where ESA believes that a Board of Governors has

not given effect to its employment scheme, ESA can require the Board of Governors to reconsider the matter.

62. The Committee noted suggestions from GBA that amendments be brought forward such that ESA should not be able to require a Board of Governors in a Voluntary Grammar school to reconsider a decision even when it was non-compliant with the school's employment scheme. NIPSA suggested an amendment which was designed to prevent alterations to an employment scheme by a Board of Governors without ESA's agreement.
63. The Committee noted submissions from the Department which indicated that the clause only allowed ESA to require Boards of Governors to reconsider and not rescind a decision. Indeed the Department advised that ESA could not give directions to Boards of Governors – except in respect of the safeguarding and promotion of the welfare of children and young persons. The Committee noted also that the policy intention was for Boards of Governors to devise their own employment schemes insofar as they complied with legislation and were compatible with the Heads of Agreement.
64. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 9.

Clause 10: Transfer to ESA of staff employed by Boards of Governors

65. Clause 10 applies Schedule 3 which allows for the transfer of staff employed by Boards of Governors of Voluntary schools (other than Catholic Maintained schools) and Grant Maintained Integrated schools to ESA.
66. CnaG in line with a number of other amendments, suggested a change to the Bill which would give IME schools a separate legal identity. CnaG argued that this was a necessary change given the developing popularity of IME and the presence of IME schools in both the Maintained and Controlled sectors.
67. The Committee agreed that this matter was connected to Clause 63 which deals with sectoral bodies and related issues, consequently Members deferred consideration of the separate legal identity for IME schools until Clause 63.
68. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 10.

Clause 11: ESA to employ peripatetic teachers

69. Clause 11 defines a peripatetic teacher as a teacher teaching subjects in a number of schools or providing special educational provision. The clause requires ESA to devise and revise schemes for the appointment of such teachers. The scheme will set out the number of peripatetic teachers employed by ESA and will ensure that such teachers will not teach in a grant-aided school unless the Board of Governors approves.
70. CnaG suggested an amendment which would specifically set out in the Bill that peripatetic teachers may be required to teach in the medium of Irish where relevant.
71. The Committee noted a Departmental response indicating the availability of teachers in the IME sector. The Committee also noted the Departmental assurance that the clause indicates that peripatetic teachers can only work in a school with the permission of the Board of Governors of that school. Thus the Department advised that in the case of an IME school, the Board of Governors could decline the services of a peripatetic teacher if they were unable to teach through the medium of Irish.

72. Members felt that this clause pertained to ESA's role as employer of all staff in schools. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier employment related clauses, the Committee agreed to reserve its position in respect of Clause 11.

Clause 12: Salaries etc. of staff: administrative and financial arrangements

73. Clause 12 allows Voluntary Grammar schools and Grant Maintained Integrated schools where they currently operate their own payment systems for salaries, to continue to do so subject to agreement with ESA. The clause also allows such schools to opt in to payment arrangements controlled by ESA.
74. GBA put forward an amendment which was designed to retain the autonomy of some Boards of Governors in respect of the payment of salaries – the amendment would remove the requirement for Boards of Governors of Voluntary Grammar schools to agree payment arrangements with ESA and to add a separate schedule to the Bill setting out payment arrangements.
75. Other stakeholders including the Association of Teachers and Lecturers (ATL), Western Education and Library Board (WELB) and NIPSA argued that schools (other than Voluntary Grammars and Grant Maintained Integrated schools) should be prevented from developing their own salary payment arrangements which are independent of ESA as it was argued that this would be most inefficient and unnecessary. NIPSA further argued that the Bill should ensure the removal of all independent salary payment arrangements currently in place in Voluntary Grammars and Grant Maintained Integrated schools. This it was argued would make ESA solely responsible for salary payments in all grant aided schools and help to ensure consistency and equality in respect of terms and conditions for all staff in schools.
76. The Association of Controlled Grammar Schools (ACGS) and the National Association of Head Teachers (NAHT) countered that the autonomy of schools would be enhanced if all schools (not just Voluntary Grammars and Grant Maintained Integrated) were permitted to develop their own salary payment arrangements which are independent of ESA.
77. The Committee noted Departmental assurances that the Bill and the employment schemes secure the autonomy of schools and generally allow the development of further autonomy where a school has the relevant capacity and its submitting authority agrees. The Department argued that amendments to preserve the existing autonomy of schools in respect of salary payments were unnecessary and should not be supported. The Department also indicated that its policy was to retain existing practices in this regard in the Voluntary Grammar and Grant Maintained Integrated sectors.
78. The Department also suggested that the extension of independent salary payment arrangements to more schools would not provide any tangible benefits to those schools. It was suggested that this would be most inefficient and an unwarranted waste of valuable school or Departmental resources.
79. Some Members took the view that schools with the relevant capacity should indeed be permitted additional autonomy in respect of salary payment arrangements, regardless of their sector. Other Members accepted the Department's submission that the development of additional salary payment arrangements would be highly inefficient and would be of limited or no benefit to schools.
80. Some Members believed that the Bill provides adequate protections for Voluntary Grammar and Grant Maintained Integrated schools and allows them to maintain their current salary payment arrangements. Other Members favoured enhancing autonomy for schools,

particularly where they have demonstrated the ability and the willingness, and indicated accordingly during the scrutiny of this clause.

81. Members again felt that this clause pertained to ESA's role as the employer of all staff in schools. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier employment related clauses, the Committee agreed to reserve its position in respect of Clause 12.

Clause 13: Modification of employment law

82. Clause 13 allows the Department to make regulations to modify any statutory provision relating to employment.
83. NIPSA suggested an amendment which was designed to remove the power from the Department to make what was described as unilateral modifications to any statutory provision relating to employment. NIPSA also proposed amendments relating to the level of consultation that the Department must undertake with the Department of Employment and Learning (DEL) and the trade unions prior to making an order to modify relevant employment law. Trade union stakeholders also wanted an explicit reference to trade unions in the list of consultees. Other stakeholders wanted a requirement for the Department to agree changes with DEL rather than to merely consult upon them.
84. The Committee wrote to the Committee for Employment and Learning seeking its views on this clause. The Committee for Employment and Learning replied indicating that it had no comment on this clause.
85. The Committee noted Departmental assurances that the clause afforded no additional powers to the Department and that these would be subject to Assembly controls.
86. The Department advised that Clause 13 was included to allow for the development of a revision to the Education (Modification of Statutory Provisions Relating to Employment) Order (NI) 1991. The Department advised that an Order made under Clause 13 is required so that employment law can be modified such that the body which carries out employment functions does so legally. The Order is to ensure that when a Board of Governors carries out an employment function which has been delegated to it from ESA by means of an employment scheme, the Board of Governors will be considered the employer. The proposed Order is to include specific clarification of employment law in relation to the Board of Governors' role in recruitment, discipline, dismissal, trade disputes and applications to tribunals.
87. The Committee noted with some surprise that the legislation under which the Education (Modification of Statutory Provisions Relating to Employment) Order (NI) 1991 was made had been repealed some time ago. The Committee also noted that the Department is presently taking legal advice on the extent of the revised delegated employment Order.
88. Clause 13 underpins ESA's role as the single employing authority of all staff in grant-aided schools. The anticipated regulations are expected to provide much-needed clarity on the relationship between ESA and Boards of Governors in respect of employment matters. In the absence of clarity on these important issues, Members felt that they could not scrutinise the clause further.
89. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and in the absence of further detail on the revised delegated employment Order, the Committee agreed to reserve its position in respect of Clause 13.

Clause 14: ESA to provide or secure provision of training and advisory and support services for schools

90. This clause places a duty on ESA to provide or secure training etc. for Boards of Governors and staff in grant-aided schools.
91. SEP suggested amendments designed to promote Shared Education by requiring ESA to provide training and support on a shared basis where possible. NAHT suggested the reallocation of the budget for training etc. from ESA to schools. TRC sought explicit reference in the Bill to provision of support for religious education. TRC also sought assurance that ESA would not source training and support exclusively from large private providers. St. Mary's University College suggested that the clause should explicitly indicate that continuing professional development for teachers should be via Northern Ireland's higher education sector.
92. The Committee noted correspondence from the Employment and Learning Committee asking that the Committee for Education give due consideration to the submission from St. Mary's University College.
93. The Committee noted the proposals put forward by SEP for greater collaboration and sharing in respect of training. The Committee agreed that it supported in principle measures to enhance sharing between schools where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
94. The Committee noted clarification from the Department that training etc. would be provided for all grant-aided schools including Nursery Schools. The Department also advised that the policy intention of the clause was to have a 'mixed market', with ESA providing some services directly; procuring others or supporting schools (or groups of schools) to provide or procure services.
95. The Committee also considered a potential amendment which would require ESA to set aside a proportion of its training services budget for use by schools in providing/procuring services. The Department advised that the intention of the amendment matched the underlying policy intention of the clause. The Department suggested that it would therefore be unnecessary to legislate in this regard and that it would be inappropriate to specify the outcome of an operational decision that ESA will be expected to take.
96. The Committee agreed it would not take forward amendments in respect of Clause 14.

Clause 15: ESA to provide library services to grant aided schools and other educational establishments

97. This clause requires ESA in line with Departmental arrangements to provide library services to grant-aided schools and other educational establishments.
98. The Department clarified that other educational establishment might include e.g. youth clubs.
99. The Committee agreed it would not take forward amendments in respect of Clause 15.

Clause 16: ESA to secure provision of educational and youth services and facilities

100. This clause places a duty on ESA to provide adequate facilities for educational and youth services. The clause allows ESA to organise activities or make grants available etc. in support of this. Additionally, the clause permits ESA to make byelaws in respect of these facilities.

101. As before, SEP proposed amendments designed to promote collaboration in respect of educational and youth services. NIPSA proposed amendments designed to prevent ESA entering into a Public Private Partnership or Private Finance Initiative in order to secure new facilities. NAHT suggested an amendment which would remove the powers which would allow ESA to develop and enforce byelaws. Teachers' representatives felt that the enforcement of such byelaws would place unwelcome additional responsibilities on school leaders.
102. The Committee agreed that it supported in principle measures to enhance sharing of educational resources where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
103. The Committee noted the Department's assurances that the provisions relating to byelaws were a simple transfer of existing powers to ESA and that these would not place any additional responsibilities on school leaders.
104. The Committee agreed it would not take forward amendments in respect of Clause 16.

Clause 17: ESA to pay capital grants to voluntary and grant-maintained integrated schools

105. This clause transfers the Department's powers to pay capital grants to voluntary and grant-maintained integrated schools to ESA.
106. The Committee agreed it would not take forward amendments in respect of Clause 17.

Clause 18: Establishment of controlled schools

107. This clause gives ESA the power to establish controlled schools – nursery, primary, secondary or special schools. ESA can also establish nursery classes in Controlled schools which are not nursery schools.
108. NICIE sought clarity as to the mechanism for ESA to open new Grant Maintained Integrated schools and called for an amendment to include a mechanism in the Bill to allow new integrated schools to be opened. TRC suggested an amendment which would require consultation with a relevant sectoral body before establishing a Controlled school.
109. The Committee noted Departmental assurances that the power to establish new Controlled Integrated schools will remain in Article 92 of the Education Reform (Northern Ireland) Order 1989 and that the mechanism for opening new Grant Maintained Integrated schools will remain in Article 71 of that Order. The Department advised that proposals for the establishment of new Grant Maintained Integrated schools or the transformation of schools into Controlled Integrated schools would have to be in conformity with the relevant Area Plan. If this is not the case, ESA would be obliged to reject the proposal. If proposals are in conformity with the Area Plan, the Minister would then have the final decision on whether the school could be established or transformed.
110. One Member strongly felt that parental preference should be the deciding factor in respect of the transformation to, or establishment of, new Integrated schools. It was robustly argued that the establishment or transformation of a school into an Integrated school required commitment from parents, pupils and indeed school staff. It was argued that to disregard this and to prefer to follow ESA's decisions in respect of the relevant Area Plan was highly iniquitous and completely at odds with the Department's responsibility to promote the Integrated Education sector. Other Members disagreed, indicating that promotion of one sector over another was in itself iniquitous.

111. The Committee agreed to defer consideration of this issue until Schedule 7 where Members would consider whether to disapply the relevant Area Planning provisions in respect of Integrated Education.
112. The Committee considered the TRC amendment which would require ESA to consult with the relevant sectoral body before establishing a new Controlled school. Members noted that Controlled Integrated schools might reasonably be represented by either or both NICIE and the Controlled Sectoral Support Body (when established). Members noted the Department's assurance that in this instance it expected ESA to consult with all relevant bodies.
113. The Committee agreed that TRC's amendment was logical but that in order to ensure consultation with both NICIE and the Controlled Sectoral Support Body (when established), it would recommend to the Assembly that Clause 18 be amended in the terms set out below:
- Clause 18, page 11, line 5, add:
- "in consultation with the relevant sectoral bodies - "
114. The Committee agreed it would not take forward further amendments in respect of Clause 18.

Clause 19: Responsibilities of ESA in relation to controlled schools

115. This clause makes ESA responsible for maintenance of school premises; providing and replacing equipment; employing all staff; and meeting the costs of all such other things as may be necessary for the carrying on of a Controlled school.
116. As above, SEP suggested amendments which would require schools to share all kinds of resources.
117. The Committee agreed that it supported in principle measures to enhance sharing of educational resources where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
118. As this clause references Clause 3 which deals with ESA's role as employer and given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question, the Committee agreed to reserve its position in respect of Clause 19.

Clause 20: ESA to contract for certain works

119. This clause gives ESA the power to enter into contracts for the provision of alterations to school premises. The contracts may be a Public Private Partnership; or traditional procurement (where the contract is between ESA and the contractor) or may be between ESA and the trustees or Board of Governors of a Voluntary or Grant Maintained Integrated school.
120. GBA and the Royal Belfast Academical Institution suggested amendments which would limit or disapply in some cases ESA's authority to enter into contracts relating to premises in Voluntary Grammar or Grant Maintained Integrated schools.
121. As highlighted previously, some Members also suggested that there was a contradiction between Clause 2(3) and Clause 20. It was argued that as ESA must obtain the agreement of the school owners before entering into contracts there would be a clear difference in the treatment of Controlled schools (whose owner is ESA) and say Voluntary Grammar schools (whose owners are their trustees).

122. The Committee noted explanations from the Department that the clause requires ESA to obtain the permission of the owners of schools before entering into contracts.
123. The Committee agreed to seek an assurance from the Minister at Consideration Stage that ESA would have no power to enter into contracts relating to the provision or alteration of school premises without the consent of the **owner** of those premises.
124. The Committee therefore agreed on this basis that it would not take forward amendments in respect of Clause 20.

Clause 21: ESA to pay superannuation benefits of teachers

125. This clause transfers the responsibility for the payment of teachers' pension benefits from the Department to ESA.
126. The Committee agreed it would not take forward amendments in respect of Clause 21.

Clause 22: Ancillary powers of ESA

127. This clause allows ESA – subject to other statutory provision – to do anything that appears to it to be conducive or incidental to the discharge of its functions.
128. INTO and the Association of School and College Leaders (ASCL) suggested amendments to Clause 22 which would limit the authority that ESA has to undertake measures conducive to the discharge of its functions. ASCL wished to protect what it described as the autonomy of schools. INTO's amendment was designed to change the clause so as to limit ESA's discretion to introduce free schools or academy schools.
129. NICIE suggested amendments which would add further definition to ESA's additional powers. NICIE suggested changes which would alter the clause to specify that ESA would have the power to encourage co-operative educational endeavours including inter-faith and multi-denominational schools. NICIE also suggested an alteration to the clause to allow ESA to assist Boards of Governors to convert their schools to interdenominational or inter-faith schools in compliance with the procedure set out in the Academies Act 2010.
130. The Committee noted Departmental assurances that the relevant ancillary powers are circumscribed by Clause 2 which sets out ESA's general duties and by Clause 22 which requires any ancillary powers to be limited by existing statutory provision. The Committee also noted Departmental assurances that the ancillary powers did not differ greatly from those of the Charities Commission or the Libraries Authority. The Department suggested that the inclusion of references to free schools; academies; inter-faith or inter-denominational schools – whether those references facilitated or prevented their development – was to anticipate policies which had yet to be consulted upon or agreed.
131. Some Members accepted that further powers were required to allow ESA to undertake conducive or incidental activities in support of the discharge of its functions as defined in the Bill. Other Members disagreed and expressed support for further definition and indeed limitation to ESA's ancillary powers.
132. The majority of Members felt that the wording in the clause (line 20, page 12) that "ESA may do anything" etc. was not acceptable. The majority of Members also supported the restriction on ESA's ancillary powers to those listed in the clause with a requirement for Assembly approval for the addition of any further powers.
133. The Committee therefore agreed that it would recommend to the Assembly that Clause 22 be amended in the terms set out below:

Clause 22, page 12, line 19

Leave out from the start of line 19 to “particular” in line 22 and insert -

‘For the purposes of discharging its functions,’

Clause 22, page 12, line 29

At end insert -

() The Department may by order amend subsection (1).

134. The Committee also agreed to recommend to the Assembly a consequential amendment to Clause 65 which would require affirmative resolution procedure for regulations in respect of Clause 22.
135. The Committee agreed it would not take forward further amendments in respect of Clause 22.

Clause 23: Power of ESA to undertake commercial activities

136. This clause allows ESA to undertake commercial activity as approved by the Department.
137. The majority of Members again felt that the wording in the clause (line 41, page 12) that “ESA may do anything” etc. was not acceptable. The majority of Members also supported the restriction of ESA’s powers in this regard to those listed in the clause with a requirement for Assembly approval for the addition of any further powers.
138. The Committee therefore agreed that it would recommend to the Assembly that Clause 23 be amended in the terms set out below:

Clause 23, page 12

Leave out lines 41 and 42

Clause 23, page 13, line 27

At end insert -

‘(9) The Department may by order amend the powers granted to ESA under this section.’

139. The Committee also agreed to recommend to the Assembly a consequential amendment to Clause 65 which would require affirmative resolution procedure for regulations in respect of Clause 23.
140. The Committee agreed it would not take forward further amendments in respect of Clause 23.

Area Planning

141. Clauses 24 to 30 deal with the Area Education Planning (or the Area Planning) process. Members noted that their consideration of these matters was undertaken in the context of an ongoing primary schools Area Planning consultation and the outworking of the post-primary schools Area Planning process. Members noted advice from the Chairperson that their deliberations should be restricted to the relevant provisions of the Bill and not the current Area Planning process.
142. The Committee noted amendments in these clauses designed to promote Shared Education. As indicated previously, the Committee agreed that it supported in principle measures to enhance sharing between schools and sectors where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to these clauses in this regard at this time.

143. One Member strongly contended that the Bill should require ESA to promote Integrated Education through the Area Planning process and strongly endorsed the relevant amendments put forward by NICIE. It was argued that proper consultation with parents and prospective parents was essential to identify and meet the need for Integrated Education. Another Member argued that as with Clause 2, ESA should be required to promote faith-based education in line with parental preference. Other Members argued that the existing duty on the Department to promote education generally and Integrated Education in particular were sufficient and that no further amendment particularly in the case of the latter was necessary for these clauses.
144. The Committee noted Departmental assurances that Area Plans would take account of provision in neighbouring areas but that a requirement to consult and involve cross-border educational providers would be outside the legal competence of the Bill. Some Members strongly argued that Area Plans should take cognisance of cross-border provision and that this would be both sensible and beneficial for communities on both sides of the border. Those Members accepted the Department's legal advice but proposed that the Committee include a recommendation in its report that ESA should be required to take account of cross-border educational provision when developing Area Plans.
145. The Committee divided and did not support this proposal. Details of the division are given in the Minutes of Proceedings in Appendix 1.
146. Some Members highlighted concerns that the Area Planning clauses provided a new and unfettered power to the Department in respect of the development and imposition of Area Plans. Other Members disputed this and argued that the provisions did not greatly alter the current position in respect of Area Planning.
147. The Committee discussed its concerns in respect of the impact of school closures in rural areas driven by Area Plans. Members strongly felt that there should be protections for strategically important schools which play a vital role in the life of rural communities. The Committee felt that rural-proofing of Area Plans would provide much-needed essential protection for rural communities.
148. The Committee therefore agreed to make the following recommendation:
- The Committee recommends that Area Plans be subject to rural-proofing and that ESA should give proper consideration to the impact on small communities of school closures in rural areas.**
149. Some Members also felt that measures similar to those in the Schools (Consultation) (Scotland) Act 2010 which include a presumption against the closure of rural schools should be included in the Bill.

Clause 24: Area Education Plans

150. This clause defines an Area Education Plan – which is to include a map of the affected area; an assessment of the educational and youth service need; an assessment of existing provision and proposals to meet need.
151. INTO and NICIE suggested amendments which would alter the clause (and subsequent clauses) to set out how areas are identified for planning purposes – NICIE suggested that areas should lie within a single council area and include coherent sets of nursery, primary, post-primary and Further Education provision. NICIE also suggested that the clause be altered to require plans to comply with the Bain Report and Sustainable Schools policy. INTO additionally suggested that Area Plans be required to consider the findings of neighbouring plans. The Northern Ireland Teachers' Council (NITC) suggested that the Department be required to set aside all Area Planning to-date and to begin the process afresh after the establishment of ESA.

152. INTO and NICCY both suggested that the Bill should require ESA to consider cross-border issues when developing Area Plans.
153. NICIE and the Integrated Education Fund (IEF) strongly argued that ESA should be required to consult with all parents and prospective parents as to the need for Integrated Education provision as part of the Area Planning process.
154. The Northern Ireland Commissioner for Children and Young People (NICCY) and SEP argued for the inclusion of a definition of Shared Education and for Area Plans to promote collaboration. TRC also suggested an amendment which would place a duty on sectoral bodies to work together to promote the sharing of educational resources in Area Plans.
155. The Committee noted the suggestions from INTO and NICIE on how areas are identified for planning purposes. The Committee also noted the Department's explanation that Area Plans covered an existing area of need not necessarily exactly aligned with district council boundaries as illustrated by the current draft Area Plans.
156. The Committee also noted NICIE's suggestion that plans should be required to comply with the Bain Report and Sustainable Schools policy. The Committee noted the Department's argument that this could be the subject of subordinate legislation.
157. The Committee also noted the Northern Ireland Teachers' Council (NITC) suggestion that the Department be required to set aside all Area Planning to-date and to begin the process afresh after the establishment of ESA. The Department advised that decisions made during the current Area Planning process in respect of individual schools would not be set aside.
158. In the absence of agreement on issues relating to Integrated Education; cross-border consultation; and the nature and extent of the Department's powers in respect of Area Planning, the Committee agreed to reserve its position on Clause 24 and all of the clauses relating to Area Planning.

Clause 25: Preparation and revision of plans

159. This clause provides for ESA to prepare and revise area education plans and to submit these to the Department for approval.
160. As with Clause 24, NICIE and the Integrated Education Fund (IEF) put forward an amendment which sought to require the Department to ensure that Area Plans provide for the development of Integrated Education and that consultation with parents to that effect is undertaken.
161. As above, one Member contended that the Bill should require ESA to promote Integrated Education through the Area Planning process and strongly endorsed the amendments put forward by NICIE. It was argued that proper consultation with parents and prospective parents was essential to identify and meet the need for Integrated Education. Other Members disagreed and argued that the existing duty on the Department to promote Integrated Education was sufficient and that no further amendment in that regard was necessary for this clause.
162. In the absence of agreement on issues relating to Integrated Education; cross-border consultation; and the nature and extent of the Department's powers in respect of Area Planning, the Committee agreed to reserve its position on Clause 25 and all of the clauses relating to Area Planning.

Clause 26: Revocation of plans

163. This clause allows ESA to revoke an Area Plan and requires it to do so if directed by the Department.

164. In the absence of agreement on issues relating to Integrated Education; cross-border consultation; and the nature and extent of the Department's powers in respect of Area Planning, the Committee agreed to reserve its position on Clause 26 and all of the clauses relating to Area Planning.

Area Planning - Consultation

165. Stakeholders also put forward amendments which sought further definition in respect of the consultees for Area Plans. NICCY and the Northern Ireland Youth Forum (NIYF) suggested that a sectoral support body for providers of youth services should be a named consultee in respect of Area Plans. NICIE argued that consultation should include young people and community audits. The trade unions suggested an amendment which would require the unions to be named consultees and also part of what they termed the "central planning group".
166. NICCY and NICIE sought a redrafting of Clause 28 to place a duty on ESA to consult and thus remove any discretion in this regard. Campbell College sought an explicit requirement for Boards of Governors to be consulted. TRC sought a similar commitment to consult with sectoral bodies.
167. The Committee recognised the crucial importance of consultation in ensuring transparency in respect of the Area Planning process. Members wished to reserve their position on the relevant clauses but strongly felt that issues in respect of perceived poor consultation in the current Area Planning process remained unaddressed. The Committee therefore agreed to make the following recommendation:

The Committee recommends that a duty be placed on ESA to consult with relevant stakeholders on Area Plans. As a minimum, the Committee expects this to include those stakeholders identified in Clause 28(5) and including in particular the Boards of Governors of all grant-aided schools including Controlled schools; parents; providers of youth services; the staff of grant-aided schools and their representatives; and sectoral bodies.

Clause 27: Publicity and consultation

168. This clause places a duty on ESA to publicise and carry out a consultation before submitting new or revising existing plans for approval by the Department e.g. ESA must consult with district councils affected by an Area Plan
169. As indicated above, the Committee noted submissions which highlighted the importance of consultation in ensuring transparency in respect of the Area Planning process. Members wished to reserve their position on the relevant clauses but agreed a related recommendation as set out above.
170. In the absence of agreement on issues relating to Integrated Education; cross-border consultation; and the nature and extent of the Department's powers in respect of Area Planning, the Committee agreed to reserve its position on Clause 27 and all of the clauses relating to Area Planning.

Clause 28: Involvement of relevant interests

171. This clause allows ESA to consult with sectoral bodies; providers of youth and educational services; children and young people; parents; school staff and Boards of Governors in respect of Area Plans. Consultation is not required in the case of a minor change to an Area Plan.
172. The Committee noted a submission from CnaG requesting an amendment to require consultation with sectoral bodies even in respect of minor changes to Area Plans. The

Committee noted the Departmental response that only inconsequential changes would be undertaken without consultation.

173. As indicated above, the Committee noted submissions which highlighted the importance of consultation in ensuring transparency in respect of the Area Planning process. Members wished to reserve their position on the relevant clauses but agreed a related recommendation as set out above.
174. In the absence of agreement on issues relating to Integrated Education; cross-border consultation; and the nature and extent of the Department's powers in respect of Area Planning, the Committee agreed to reserve its position on Clause 28 and all of the clauses relating to Area Planning.

Clause 29: Guidance

175. This clause requires ESA to take account of guidance issued by the Department on the production of an Area Education Plan.
176. The Committee noted a suggestion from the Community Relations Council that Departmental guidance on Area Planning should require ESA to promote Shared Educations.
177. The Committee noted a number of proposals in respect of Shared Education. As indicated previously, the Committee agreed that it supported in principle measures to enhance sharing between schools and sectors where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
178. In the absence of agreement on issues relating to Integrated Education; cross-border consultation; and the nature and extent of the Department's powers in respect of Area Planning, the Committee agreed to reserve its position on Clause 29 and all of the clauses relating to Area Planning.

Clause 30: Regulations

179. This clause allows the Department to make regulations to control the form and content of Area Plans and procedures to be followed in the production of a plan and its revocation and on the procedures for consultation.
180. The Committee agreed that although it was to reserve its position on these clauses, it would support an amendment to Clause 65 which would require regulations that were made under this clause to be subject to affirmative rather than negative resolution.
181. In the absence of agreement on issues relating to Integrated Education; cross-border consultation; and the nature and extent of the Department's powers in respect of Area Planning, the Committee agreed to reserve its position on Clause 30 and all of the clauses relating to Area Planning.

Clause 31: Dissolution of certain statutory bodies

182. This clause dissolves the Education and Library Boards; the Council for Catholic Maintained Schools; the Staff Commission for the Education and Library Boards; and the Youth Council for Northern Ireland.
183. The Committee considered this clause wherein ESA will replace the Education and Library Boards and CCMS etc. The clause in tandem with others establishes ESA as the employer / single employing authority for all staff in schools.

184. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier employment related clauses, the Committee agreed to reserve its position in respect of Clause 31.

Clause 32: Transfer of assets, liabilities and staff

185. This clause applies Schedule 4 which allows for the transfer of assets, liabilities and staff of the dissolved bodies to ESA. The clause also applies Schedule 5 which deals with the transfer of assets, liabilities and staff of CCMS to ESA. The clause also applies Schedule 6 which deals with the transfer of staff from the Department to ESA.
186. The Committee had requested sight of the list of assets, liabilities and staff posts which are to transfer to ESA. The Department had not provided this information. The Committee therefore felt that it could not meaningfully scrutinise this clause.
187. Additionally and as above, the Committee felt that this clause dealt with ESA's role as employer or. employing authority for all staff in schools.
188. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier employment related clauses, the Committee agreed to reserve its position in respect of Clause 32.

Part 2: Management of Grant-Aided Schools

Schemes of Management

189. Clauses 33 to 37 deal with Schemes of Management. The Committee felt that these clauses were key to ESA's role as employer / single employing authority for staff in all grant-aided schools.
190. The Committee noted Departmental evidence setting out the nature of schemes of management (and schemes of employment) and agreed that such documents should be available to the relevant staff and their representatives. Consequently the Committee agreed to support in principle a proposed Ministerial amendment which would require schools to make a scheme of management available to any person on request. The Committee noted that barring a number of standard items, the draft model schemes of management permitted schools to vary the content of their own scheme. The Committee also noted Departmental assurances that variations to terms and conditions would continue to be a matter for resolution with staff and their representatives.
191. As with Clause 2(5), some Members strongly opposed Clause 33(5) which includes provisions requiring school governors to support the viability of Irish Medium schools arguing that this provided unwarranted assistance for a form of education which would only ever be popular with a very small minority of the school population. Other Members strongly argued that without additional and proportionate support for Irish Medium Education, the development of a culturally important educational sector would be stifled with far-reaching ramifications in respect of equality and fairness in education.
192. Some Members also argued that management schemes should require governors to support the viability of the school regardless of its sector.
193. The Department advised that those clauses in this part of the Bill which reference the Heads of Agreement – Clause 34 - could not be operated owing to contradictions within the Heads of Agreement.
194. The Committee felt that the clauses referencing the management schemes were key to ESA's role as sole employer. As indicated previously, a majority of Members strongly felt that necessary clarification on the Heads of Agreement and the role of ESA as employer had not

been provided. A majority of Members felt that this important issue had to be resolved before the Committee could properly determine its position on clauses and schedules relating to (employment and) management Schemes. In the absence of responses from the Minister and OFMDFM, the Committee agreed to continue with its scrutiny of the other clauses and schedules of the Bill and to reserve its position on the clauses and schedules which reference ESA's role as employer or single employing authority.

195. It should be noted however that some Members disagreed and argued that there was no material contradiction in the Heads of Agreement and that the new arrangements in respect of delegated employment scarcely differed from the present situation. These Members suggested that any possible difficulties in respect of (employment or) management schemes could be resolved through regulations.

Clause 33: Schemes of Management

196. Clause 33 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 legislation (including the Education Bill) and with any governance instrument of the school. Boards 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.
197. Some of the Trade Unions suggested that the clauses be amended to require schemes of management to be standard, public documents with little variation. The NITC requested an amendment which would alter schemes of management so as to prevent Boards of Governors from limiting staff mobility. The Trade Unions also sought an amendment to require that they be consulted on the contents of schemes.
198. NICCE and CCMS suggested an amendment which would require Boards of Governors to maintain the viability of Catholic schools. NICCY suggested an amendment which would require schemes of management to promote Integrated Education.
199. Some Members strongly felt that Boards of Governors should be required to promote faith-based education or Integrated Education. Other Members suggested that Boards of Governors should be required to support the viability of their school regardless of the educational sector.
200. Although Members wished to reserve their position on this series of clauses, the Committee did agree that it supported in principle the Minister's proposed amendments which would require the Department to consult with the trade unions and sectoral bodies on guidance and require a submitting authority to consult with the trade unions in respect of a revised or original management scheme.
201. Given the Committee's concerns in respect of the Heads of Agreement and the employer / employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 33.

Clause 34: Preparation and approval of schemes of management

202. This clause requires the submitting authority of every grant-aided school to prepare and submit a scheme of management to ESA for approval. The clause permits DE to issue guidance and model schemes to schools with the approval of OFMDFM. ESA must approve a scheme if it complies with statutory requirements (including the Education Bill). If ESA chooses to not approve a scheme it must be referred to the Tribunal established under Clause 62. If ESA approves a scheme which Boards of Governors find unacceptable, they may also refer it to the Tribunal – for a test of compatibility with the Heads of Agreement.

203. SEP suggested amendments which would require guidance to include the promotion of collaborative partnerships. NICCE and CCMS, as with Clause 3, suggested that references to Boards of Governors setting admissions criteria should be removed. The Association of Controlled Grammar Schools (ACGS) suggested that the clause be amended to allow schemes of management to recognise the varying degrees of autonomy in schools.
204. TRC suggested that there should be consultation with sectoral bodies in respect of model schemes of management. NICCE and CCMS suggested changes to remove reference to the Heads of Agreement in the clause. GBA suggested that in order to enshrine the principle of autonomy submitting authorities should be required to obtain the agreement of Boards of Governors rather than simply having to consult them on the content of schemes of management.
205. In respect of SEP's suggestions, the Committee agreed that it supported in principle measures to enhance sharing between schools where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
206. In respect of NICCE/CCMS proposed amendments on admission criteria operated by Boards of Governors, the majority of Members felt that the references to Boards of Governors' discretion in respect of admission policy should not be amended in Clause 33.
207. In respect of ACGS, as indicated above, the Committee noted that barring a number of standard items, the draft model schemes of management permitted schools to vary the content of the scheme in line with their own level of autonomy.
208. In respect of TRC's amendment, although Members wished to reserve their position on this series of clauses, the Committee did agree that it supported in principle the Minister's proposed amendments which would require the Department to consult with sectoral bodies on guidance on management schemes.
209. The Committee also noted suggestions that the issuing of guidance by the Department which is subject to approval by OFMDFM should also be subject to Assembly scrutiny. Some Members suggested that guidance should only be issued as part of regulations which would be subject to affirmative resolution procedure.
210. In respect of amendments relating to the Heads of Agreement, the Department advised that those clauses which reference the Heads of Agreement (Clauses 3 and 34) could not be operated owing to contradictions within the Heads of Agreement. Specifically, part 5 of the Heads of Agreement indicates that ESA is to be the single employing authority for all staff in grant-aided schools while part 10c indicates that where "it is already the case, Boards of Governors will continue to employ and dismiss members of staff".
211. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and given also the Department's advice that the clause is inoperable as drafted, the Committee agreed to reserve its position in respect of Clause 34.

Clause 35: Reserve power of ESA to make scheme of management

212. This clause allows ESA to make a scheme of management where the submitting authority fails to do so or where the submitting authority asks ESA to produce a scheme. ESA must consult with the submitting authority. The scheme may include modifications as specified by ESA. Clause 35 also applies where revised guidance is issued by the Department with OFMDFM approval.

213. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 35.

Clause 36: Revision of schemes of management

214. This clause requires submitting authorities to submit revised schemes of management if revised guidance is issued by the Department with OFMDFM approval. In this instance, if a submitting authority refuses to produce a revised scheme, ESA may under Clause 35 issue a scheme.
215. Although Members wished to reserve their position on this series of clauses, the Committee did agree that it supported in principle the Minister's proposed amendments which would require the submitting authority to consult the trade unions in respect of a revised management scheme.
216. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 36.

Clause 37: Procedure where ESA does not approve a submitted scheme

217. This clause covers those instances where schemes are not approved by ESA and are therefore referred to the Tribunal. The Tribunal may order ESA to approve a scheme or order ESA to approve a modified scheme as specified by the Tribunal. The Tribunal can also impose a different scheme of management on the school in question. During the period of referral to the Tribunal, the scheme in place before referral will continue to have effect unless the Tribunal, on application by ESA, decides that the submitted scheme with modification as specified by the Tribunal applies.
218. INTO suggested that the clause be amended to allow access to the Tribunal by 3rd parties e.g. trade unions for the resolution of other issues.
219. The Department indicated that the Minister is to bring forward amendments to give OFMDFM responsibility for all aspects of the Tribunal including the appointment of its members.
220. Although Members wished to reserve their position on this series of clauses, the Committee did agree that it supported in principle the Minister's proposed amendments which transfer responsibility for the Tribunal to OFMDFM.
221. Given the Committee's concerns in respect of the Heads of Agreement and the employer / single employing authority question and consistent with its position on earlier related clauses, the Committee agreed to reserve its position in respect of Clause 37.

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

222. This clause requires Boards of Governors to promote the achievement of high standards of educational attainment. The clause also requires Boards of Governors to co-operate with ESA with respect to actions undertaken by ESA to promote high standards.
223. NAHT and ACGS suggested that the clause be amended to either better define attainment or to explicitly require Boards of Governors to add value rather than simply achieve high standards of academic success. NICCY commented that additional support would be required for governors if they were to fulfil this role. The Confederation of British Industry (CBI) suggested that Boards of Governors should be required to promote connections with

business. NITC argued that the clause would bring teachers in to conflict with their Boards of Governors. NITC also sought changes which would require trade union representation on Boards of Governors.

224. The Committee strongly felt that many good schools provided a value-added educational experience for children which might not always translate into the highest standards of academic success. Members felt that the benefits of education may not always be easily measurable and that this should be recognised and understood.
225. The Committee felt that Boards of Governors had a key role to play in the setting of standards of achievement in schools. The Committee believed that more work needed to be done to ensure that the value-added by schools and Boards of Governors to children's education is better understood. The Committee therefore agreed the following recommendation:
- The Committee recommends that the Department undertakes further study on how educational value is added by schools. To that end, the Department should consider the development of measures of achievement for pupils and schools which would complement the existing measures which are based on academic success.**
226. The Committee did not support suggestions for changes to the composition of Boards of Governors and did not support the argument that Clause 38 would bring teachers into conflict with Boards of Governors. Members did feel that support for governors should be enhanced in light of this duty.
227. The Committee agreed it would not take forward amendments in respect of Clause 38.

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

228. This clause transfers from the Education and Library Boards 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 the continuing viability of the school or unit as an Irish speaking school or unit.
229. As above, the trade unions suggested amendments which would give trade unions representation on Boards of Governors. The Northern Ireland Youth Forum (NIYF) suggested that the Bill be amended to require ESA to give young people places on Boards of Governors.
230. NICCY asked how commitment to ethos was to be determined and if commitment to academic selection or the voluntary principle was an ethos. The unions suggested removal of the ethos criterion for all governors.
231. INTO sought clarity as to whether the clause required governors to prioritise an Irish speaking unit over the rest of a school. CnaG suggested amendments which are designed to reinforce the commitment of governors to the ethos in IME schools.
232. The TRC wanted ESA to be required to consult with the relevant sectoral body in respect of appointments - so as to provide for the sectoral body to have precedence over the Boards of Governors of the school in this regard.
233. The Committee did not support suggestions for changes to the composition of Boards of Governors. The Committee noted a Departmental response pointing out that there is no age qualification for appointment of a school governor and thus no bar to young people becoming governors.

234. The Committee noted the Department's response on ethos – indicating that Boards of Governors would determine whether a prospective governor was committed to an ethos and what that ethos might be.
235. As with Clause 2(5), some Members strongly opposed provisions requiring governors to support the viability of Irish Medium schools arguing that this provided unwarranted assistance for a form of education which would only ever be popular with a very small minority of the school population. It was also argued that the relevant provisions should be revised to require commitment to the viability of all schools or perhaps of all faith-based schools. Other Members strongly argued that without additional proportionate and particular support for Irish Medium Education, the development of a culturally important educational sector would be stifled with far-reaching ramifications in respect of equality and fairness in education.
236. The Committee also noted the Department's response to the TRC amendment where it was argued that the amendment would create a hierarchy of consultees which was not the policy intention of the Bill.
237. As the Committee could not resolve significant differences of opinion in respect of IME, Members agreed to reserve their position in respect of Clause 39.

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

238. This clause allows part-time teachers but not temporary teachers to be eligible for election as governors of their school.
239. The Committee agreed it would not take forward amendments in respect of Clause 40.

Clause 41: Management of controlled schools

240. This clause makes a Board of Governors of a Controlled school responsible for its control and management. The clause also permits more than one controlled nursery school to be grouped under a single Board of Governors. The Department advised that this was a significant provision which would enhance the autonomy of Controlled schools.
241. SEP suggested an amendment which would allow 2 or more Controlled primaries to be managed by a single Board of Governors. The Committee noted the Department's response to the SEP suggestion which indicates that the Bill already permits 2 or more Controlled primaries to be managed by a single Board of Governors.
242. TRC proposed an amendment which would allow Transferors to retain their representation on a Board of Governors when a Controlled school merges with a Controlled grammar and chooses to keep a grammar school ethos. The Committee also noted the Department's view that the TRC amendment may be viewed as unlawful as Transferors have never had nomination rights to the Boards of Governors of grammar schools and the suggested provision would therefore not be based on preserving existing rights.
243. Some Members expressed some support for the principle of the TRC amendment.
244. These Members also highlighted concerns in respect of the requirement for teachers in Catholic Maintained primary schools to possess the Certificate in Religious Education (also sometimes referred to as the Catholic Teaching Certificate). Members argued that in the case of a merger between a Catholic Maintained primary school and a Controlled primary school, it would be unreasonable to require teachers from the Controlled primary to be obliged to obtain the Certificate in Religious Education. The Committee understands that the requirement for the Catholic Teaching Certificate will, after the passage of the Bill, remain a matter for the Board of Governors of the merged schools.

245. As questions in respect of TRC nominations to Boards of Governors of certain merged Controlled schools and the requirement for primary teachers to obtain the Certificate in Religious Education remain unresolved, the Committee agreed to reserve its position in respect of Clause 41.

Clause 42: Management of maintained nursery schools

246. This clause allows more than one maintained nursery schools to be grouped under a single Board of Governors.
247. The Committee agreed it would not take forward amendments in respect of Clause 42.

Clause 43: Controlled school: definition

248. This clause defines a controlled school as a grant-aided school whose premises are vested in ESA.
249. The Committee agreed it would not take forward amendments in respect of Clause 43.

Part 3 Inspections

Inspections

250. Clauses 44 to 48 give additional powers to the Department to undertake inspections in schools and in institutions of further education and colleges of education.
251. In respect of these clauses, the Committee noted reference in the Heads of Agreement to further consideration of the future of the inspectorate. Some Members therefore suggested that clauses referencing inspections should not be included in the Bill at all.
252. The Committee noted the Department's clear assertion that the Education and Training Inspectorate (ETI) was part of the Department and would therefore be part of the mechanism through which Departmental policy would be applied. Some Members felt that the absence of independent control and management of the ETI would prevent reasonable and valuable criticism of Departmental policy. These Members felt that current arrangements prevent ETI from fulfilling its proper role as a critical friend to schools and independent partner in the school improvement process.
253. The Committee noted Departmental responses explaining the proposed enhancement of the powers of inspectors in respect of the removal of documents, computers etc.; advising as to how the management of schools was to be inspected and explaining the role of lay inspectors. The Committee also noted Assembly Research papers on the role of the inspectorate in other jurisdictions, particularly Scotland.
254. Some Members had significant reservations in respect of the granting of additional powers to inspectors given the current governance arrangements for the ETI. Others countered that the ETI was a successful component in the school improvement process. These Members felt that the enhancement of powers was, as the Department advised, limited when compared to inspectorates in other jurisdictions and entirely justified.
255. Some Members made reference to unsatisfactory complaints procedures and the absence of an appeals process for schools. These Members felt that such procedures and processes would add to the transparency and underpin the legitimacy of the school inspection process.
256. The majority of Members therefore agreed the following recommendations:

The Committee recommends that the Department should bring forward legislation which will make the Education and Training Inspectorate a fully independent body which can act as the critical friend and independent improvement partner for all schools.

The Committee recommends that the Department should bring forward at the earliest opportunity measures to enhance the transparency of the Education and Training Inspectorate including a statutory complaints procedures and appeals process.

257. As there were significant differences in opinion in respect of the powers of the inspectorate and the appropriateness of the inclusion of clauses relating to inspections in this Bill, the Committee agreed to reserve its position in respect of all of the relevant clauses.
258. The Committee also noted that the Minister for Employment and Learning had brought forward amendments to Clauses 47 and 48 to extend the statutory inspection regime to private providers of further and higher education. Members felt that although they were to reserve their positions on the relevant clauses, they would support in principle the Minister for Employment and Learning's amendments.
259. The Committee also felt that it would support in principle the Minister of Education's proposed amendments which would place a statutory requirement on inspectors to provide sectoral bodies with reports on relevant schools.

Clause 44: Inspections on behalf of the Department

260. This clause allows inspectors appointed by the Department 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 in 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 etc. Inspection will not include Religious Education except where the Board of Governors agrees. The Department may give direction under Article 101 for the purpose of remedying any matter identified in an inspection report.
261. INTO suggested that the inspectorate should promote partnership with schools and that ETI couldn't promote high standards when it is also required to report on standards. INTO also suggested that there should be some limitation on the aspects of an educational establishment upon which inspectors report.
262. Western Education and Library Board (WELB) suggested that ETI should be an independent body and that it should have a multi-disciplinary workforce. CnaG wanted changes which would require inspectors to monitor compliance with the duty to facilitate IME. SEP suggested that inspectors be required to share "next practice". NICCE and CCMS suggested that governance and leadership be assessed by inspectors in line with the Every School a Good School policy.
263. The TRC suggested that the clause be amended to allow Religious Education to be inspected at the request of Boards of Governors.
264. The Committee noted Departmental responses in respect of the amendments put forward by INTO which indicated that the role of the inspectorate envisioned in the Bill including reviewing the governance of schools matched the policy position in Every School a Good School.
265. The Department advised in respect of CnaG's amendment that as the inspectorate is part of the Department it is already obliged to consider how best IME can be facilitated in schools.
266. In respect of the SEP amendment, the Department argued that the sharing of best or next practice was an operational matter for the inspectorate.

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267. In respect of the NICCE / CCMS suggestion that governance and leadership should be assessed by inspectors in line with the Every School a Good School policy, the Department advised that this indeed would be the case. Likewise in respect of the TRC suggestion that Religious Education should be inspected at the request of Boards of Governors, the Department again advised that this would be the case.
268. As there were significant differences in opinion in respect of the powers of the inspectorate and the appropriateness of the inclusion of clauses relating to inspections in this Bill, the Committee agreed to reserve its position in respect of Clause 44.
269. The Committee therefore also reserved its opinion in respect of proposed Ministerial amendments which would include more explicit reference to the inspection of governance, leadership, teaching and learning in schools in Clause 44.

Clause 45: Powers of Inspectors

270. This clause allows inspectors to inspect, take copies or take away relevant documents. The clause requires relevant persons to make documents available. The clause allows inspectors to have access to computers etc. as necessary and at reasonable times only.
271. Trade Unions suggested that there be limitations put on the powers of inspectors and that consideration be given to the costs etc. associated with information requests. Other stakeholders questioned as to why additional powers for inspectors were required.
272. The Department advised that the enhancement of inspectors' powers were to provide for similar powers available in other jurisdictions. The Department advised that requests for information would have to be necessary and reasonable and therefore would not lead to disproportionate costs for schools.
273. Some Members expressed considerable concerns in respect of the proposed enhancement of the powers of inspectors. Other believed that the enhancement was necessary and proportionate.
274. As there were significant differences in opinion in respect of the powers of the inspectorate and the appropriateness of the inclusion of clauses relating to inspections in this Bill, the Committee agreed to reserve its position in respect of Clause 45.

Clause 46: Reports and action plans

275. This clause requires inspectors to produce a report following an inspection. The report must be shared with the Department, ESA and the Board of Governors of the school. The Department may publish the report in a manner it deems appropriate. The Board of Governors must produce and publish a statement of the action it is to take on foot of the report.
276. INTO suggested that inspectorate reports are public documents and that Boards of Governors should have the right to challenge and appeal the ETI's findings. Other stakeholders suggested that reports and plans of action should be made available to relevant sector support bodies.
277. The Committee supported suggestions in respect of an appeals process for schools and made a recommendation which is set out above.
278. The Committee also felt that it would support in principle the Minister of Education's proposed amendments which would place a statutory requirement on inspectors to provide sectoral bodies with reports on relevant schools.

279. As there were significant differences in opinion in respect of the powers of the inspectorate and the appropriateness of the inclusion of clauses relating to inspections in this Bill, the Committee agreed to reserve its position in respect of Clause 46.

Clause 47: Inspection on behalf of DEL

280. This clause allows inspectors to inspect institutions of further education and colleges of education.
281. The Committee noted suggested amendments from St. Mary's University College suggesting that reference should be made to inspections for teacher training colleges.
282. The Committee noted that the Minister for Employment and Learning had brought forward amendments to Clauses 47 and 48 to extend the statutory inspection regime to private providers of further and higher education. The Committee noted also that further amendments from the Minister of Employment and Learning may go some way to addressing the suggestions put forward by St. Mary's University College. Members felt that although they were to reserve their positions on the relevant clauses, they would support in principle the Minister for Employment and Learning's amendments.
283. As there were significant differences in opinion in respect of the powers of the inspectorate and the appropriateness of the inclusion of clauses relating to inspections in this Bill, the Committee agreed to reserve its position in respect of Clause 47.

Clause 48: Assessors and lay persons

284. This clause allows assessors and lay persons to be appointed by the Department to assist with inspections. Persons shall not be appointed if the Department believes that the person has significant experience of management or the provision of education. The Department can remove lay persons and must ensure that lay persons have no connection with the establishment under inspection.
285. INTO referred to the need for ETI to have a multi-disciplinary workforce. NIPSA suggested a drafting amendment.
286. The Department advised that ETI already has a multi-disciplinary workforce and also explained that the NIPSA amendment was unnecessary.
287. The Committee also noted a written Departmental response which indicated that ETI has no plans to make use of lay assessors.
288. The Committee noted that the Minister for Employment and Learning had brought forward amendments to Clauses 47 and 48 to extend the statutory inspection regime to private providers of further and higher education. Members felt that although they were to reserve their positions on the relevant clauses, they would support in principle the Minister for Employment and Learning's amendments.
289. As there were significant differences in opinion in respect of the powers of the inspectorate and the appropriateness of the inclusion of clauses relating to inspections in this Bill, the Committee agreed to reserve its position in respect of Clause 48.

Part 4 Functions of the Northern Ireland Council for the Curriculum, Examinations and Assessment

Council for the Curriculum, Examinations and Assessment

290. Clauses 49 to 54 cover the functions of CCEA. The Committee sought information as to the degree to which these clauses either re-enacted existing provisions or brought into effect new policy in respect of CCEA. The Committee noted responses from the Department on this issue and on the degree to which CCEA interacts with business and commerce in the development of curricula and examinations.
291. The Committee noted reference in the Heads of Agreement to further consideration of the future of CCEA. Some Members felt that as with the inspectorate, the Bill to establish ESA may not be a suitable vehicle for clauses relating to CCEA.
292. The Committee also noted stakeholder suggestions that there was an inherent conflict of interests as CCEA was an examining body and also the examinations regulator.
293. As a consequence of the above and in the absence of a satisfactory resolution to these concerns, the Committee agreed to reserve its position in respect of clauses 50 to 54.

Clause 49: Interpretation of this part

294. This clause defines certain terms used in part 4 of the Bill
295. The Committee agreed that it would not support amendments in respect of Clause 49.

Clause 50: Functions of the Council in relation to the designated examinations and the statutory assessments

296. This clause allows the Council for the Curriculum, Examinations and Assessment (CCEA) to conduct designated examinations, specify exam papers, charge fees etc.
297. WELB suggested that the clause be amended such that CCEA would no longer retain responsibility for assessing itself on pupil attainment. NICCE / CCMS suggested changes which would require CCEA to ensure that qualifications were portable to other jurisdictions. The Catholic Heads Association suggested in oral evidence that CCEA should be non-profit-making.
298. Members felt that CCEA should ensure that qualifications were transferable to other jurisdictions. The Committee noted the Department's assurance that Clause 54(1)(c) would provide for this.
299. Members expressed some concerns in respect of CCEA's profits.
300. As indicated above and as a consequence of concerns relating to the possible conflict of interest and the appropriateness of clauses relating to CCEA, the Committee agreed to reserve its position in respect of Clause 50.

Clause 51: Functions of the Council in relation to the accreditation of the designated qualifications

301. This clause allows CCEA to accredit designated examinations and to co-operate with other exam bodies in other jurisdictions within or outside of the UK.

302. NICCE / CCMS suggested changes which would require CCEA to ensure that qualifications were portable to other jurisdictions. NAHT suggested removal of the reference to CCEA working with exam bodies outside of the UK.
303. As above the Committee felt that CCEA should indeed ensure that qualifications were transferable to other jurisdictions. The Committee again noted the Department's assurance that Clause 54(1)(c) would provide for this.
304. The Committee also noted the Department's explanation that CCEA needed to work with international curriculum and examination bodies so as to ensure the appropriate standards and transferability of qualifications.
305. As indicated above and as a consequence of concerns relating to the possible conflict of interest and the appropriateness of clauses relating to CCEA, the Committee agreed to reserve its position in respect of Clause 51.

Clause 52: Other functions of the Council

306. This clause requires CCEA to: keep under review examinations and the curriculum; produce teaching materials; advise the Department; and consult as appropriate.
307. As indicated above and as a consequence of concerns relating to the possible conflict of interest and the appropriateness of clauses relating to CCEA, the Committee agreed to reserve its position in respect of Clause 52.

Clause 53: Ancillary functions of the Council

308. This clause allows CCEA to undertake ancillary functions as directed by the Department and DEL. The clause requires CCEA to provide reports and information as required by DEL and DE.
309. As indicated above and as a consequence of concerns relating to the possible conflict of interest and the appropriateness of clauses relating to CCEA, the Committee agreed to reserve its position in respect of Clause 53.

Clause 54: Discharge by the Council of its functions

310. This clause places a duty on CCEA to take account of: industry and commerce; pupils with Special Educational Needs (SEN) and those attending IME schools. The clause requires CCEA to ensure that exam standards are recognised as equivalent throughout the UK.
311. The CBI sought clarification as to how CCEA currently ensures that it takes account of the needs of industry and commerce. The Committee noted a Departmental response on this question and noted also that the relevant clause essentially replicates an existing provision in the Education (Northern Ireland) Order 1998. The Committee agreed to pursue the issue of CCEA's interaction with business and commerce following the conclusion of the Committee Stage.
312. The Committee also sought information on the policy position underpinning CCEA and the costs associated with curricular support for IME and SEN. The Committee did not receive a response prior to the conclusion of its review of the clauses of the Education Bill.
313. As indicated above and as a consequence of concerns relating to the possible conflict of interest and the appropriateness of clauses relating to CCEA, the Committee agreed to reserve its position in respect of Clause 54.

Part 5 Protection of children and young persons

Safeguarding and promoting welfare of children and young persons

314. Clauses 55 to 59 contain provisions relating to the safeguarding and the promotion of welfare of children and young people. The Committee noted Departmental assurances that these provisions were designed to allow ESA to work with the Safeguarding Board and the associated existing legislation so as to provide a practical and secure framework under which the welfare of children and young people could be protected.
315. The Committee noted that the National Society for the Prevention of Cruelty to Children (NSPCC) welcomed the clauses. The Committee sought detail as to how ESA would work with the Safeguarding Board and the protocol to be adopted in respect of information-sharing. The Committee noted also Departmental assurances that these clauses were the only provisions in the Bill which allowed ESA to give direction to a Board of Governors.
316. The Committee congratulated the Department on bringing forward these important protections for children and young people and agreed that it would not bring forward amendments to any of the clauses in this part of the Bill.

Clause 55: Safeguarding and promoting welfare of children and young persons

317. 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.
318. The Committee agreed that it would not bring forward amendments in respect of Clause 55.

Clause 56: Duty on providers of funded pre-school education to safeguard and promote welfare of children

319. This clause places a duty on providers of pre-school education to safeguard the welfare of children and to produce a written statement of protection measures. The Department or ESA will issue guidance. The provider must follow direction from ESA or the Department in this regard.
320. The Committee agreed that it would not bring forward amendments in respect of Clause 56.

Clause 57: Duty on providers of educational and youth services to safeguard and promote welfare of children

321. This clause places a duty on ESA or the Department where a grant is made for educational or youth services to ensure that conditions are made to ensure that children's welfare is safeguarded and promoted.
322. The Committee agreed that it would not bring forward amendments in respect of Clause 57.

Clause 58: Directions as to exercise of child protection duties by Board of Governors

323. This clause amends the 2003 Order to allow ESA to give direction to a Board of Governors in relation to a duty to safeguard or promote the welfare of children.

324. As indicated above, the Committee noted the Department's assurance that this provision was the only provision in the Bill which would permit ESA to give a direction to a Board of Governors.
325. The Committee agreed that it would not bring forward amendments in respect of Clause 58.

Clause 59: Duty of co-operation concerning welfare and protection of children and young persons

326. This clause requires BoGs and providers of pre-school education or providers of education and youth services to co-operate with ESA in the safeguarding and promotion of the welfare of children
327. The Committee agreed that it would not bring forward amendments in respect of Clause 59.

Part 6 Miscellaneous and supplementary

Clause 60: General duty of the Department and DEL

328. This clause amends the Education Reform (Northern Ireland) Order 1989 to set out the Department's general duties which include: promotion of education for children and young persons etc. The clause also sets out the duty on the Department of Employment and Learning to promote further and higher education.
329. CnaG suggested an amendment which would place a further duty on the Department to promote IME. CRC suggested that there be an amendment which would place a duty on the Department to promote Shared Education. NICIE and IEF suggested an amendment which would place a further duty on the Department to promote Integrated Education.
330. The Committee noted Departmental advice that CnaG's amendment was unnecessary as there was an existing duty on the Department in Article 89 of the Education (Northern Ireland) Order 1998 to encourage and facilitate IME. As before, some Members highlighted their opposition to measures to promote IME. Also as before, other Members highlighted their support for the promotion of IME. However Members accepted that there was no requirement for an amendment to this clause in this regard at this time.
331. In respect of the proposed amendment by CRC, the Committee agreed that it supported in principle measures to enhance sharing between schools where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
332. The Committee noted Departmental advice which suggested that the amendment proposed by NICIE / IEF was unnecessary as Article 64 of the Education Reform (Northern Ireland) Order 1989 places a duty on the Department to encourage and facilitate Integrated Education. As before some Members indicated their opposition to amendments or clauses to promote Integrated Education as it was argued that they which might create inequality and lead to disadvantage for other sectors e.g. the Controlled sector. As before, a Member indicated his support for additional provisions in support of Integrated Education arguing that these were essential so as to maintain equality between sectors. However Members accepted that there was no requirement for an amendment to this clause in this regard at this time.
333. The Committee agreed that it would not bring forward amendments in respect of Clause 60.

Clause 61: Grants for educational and youth services

334. This clause amends the Education Reform (Northern Ireland) Order 1986 to allow the Department; DEL and the Department of Culture Arts and Leisure to pay grants to persons for various services and relevant research.
335. CnaG suggested an amendment which would allow the payment of grants to organisations promoting IME. NICIE and IEF suggested an amendment which would allow the payment of grants to organisations promoting Integrated Education
336. The Committee noted Departmental explanations that neither amendment was necessary as the Department had existing powers to pay grants to organisations promoting IME or Integrated Education.
337. The Committee agreed that it would not bring forward amendments in respect of Clause 61.

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

338. 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 which are referred to it under Clauses 8 and 37.
339. INTO suggested an amendment which would grant access to the Tribunal for 3rd parties including unions in respect of issues not necessarily related to employment and management schemes. GBA suggested an amendment which would allow the Tribunal to adjudicate on all disputes between ESA and Boards of Governors not just those relating to employment schemes and management schemes. WELB sought clarification on the costs etc. of the tribunal.
340. The Department noted that the Minister is to bring forward amendments which would transfer responsibility for all functions of the Tribunal including the appointment of its members to OFMDFM.
341. Most Members indicated that they supported in principle the Minister's amendments transferring responsibility for the Tribunal to OFMDFM.
342. As this clause references the employment and management schemes and therefore touches on ESA's role as employer of all staff in schools and given the Committee's concerns in respect of the Heads of Agreement and the employer / employing authority question, the Committee agreed to reserve its position in respect of Clause 62.

Clause 63: Sectoral Bodies

343. This clause defines a sectoral body as being 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.
344. CnaG highlighted that IME schools are currently in a number of different educational sectors. CnaG sought an amendment which would give IME schools a new legal status - separate from other sectors.
345. Some Members felt that the development of a separate legal identity for Irish Medium Education schools was a necessary step, crucial for the evolution of this emerging and culturally important sector. Other Members felt that the Irish Medium Education already had sufficient protections within existing legislation and that these amendments and the related provisions in the Bill would lead to an unfair imbalance in favour of the IME sector which would be detrimental to other sectors. The Committee also noted that the Minister is

considering whether to bring forward amendments which would introduce a revised definition of an “Irish speaking school”. In the absence of the relevant amendments, the Committee reserved its position on this series of amendments.

346. The Committee noted a submission from NICCE and CCMS which sought a new definition of a “Catholic school” and rewording in a number of parts of the Bill to remove references to “Catholic Maintained” schools and to replace this with “Catholic voluntary” schools. The Committee also noted that the Minister is considering whether to bring forward amendments which would clarify the definition of a “Catholic school”. In the absence of the relevant amendments, the Committee reserved its position on this series of amendments.
347. The Committee noted suggested amendments from some of the teaching unions which would abolish sectoral bodies or require them to make their contribution from outside the funding structures of the education system in Northern Ireland. Others stakeholders proposed amendments which would ensure that sectoral bodies were in place to represent all school types including Voluntary Grammars, Maintained, Controlled, Integrated and Irish Medium schools. The NIYF suggested an amendment which would create a sectoral body for young people. Some stakeholders wanted amendments which would clarify the role of sectoral bodies and the relationship between them. NICCE / CCMS suggested amendments to clearly set out how the relevant sectoral body should be identified. TRC suggested an amendment which would require sectoral bodies to work together and to promote Shared Education.
348. Members generally supported the proposed role for sectoral bodies. Some Members strongly felt that there should be a sectoral body to represent the interests of Voluntary Grammar schools. These Members contended that the Bill represented an inexplicable failure to recognise a vital sector which successfully educated a large proportion of the school population. Others Members disagreed and argued that the anticipated sectoral bodies would adequately represent all educational sectors and that other measures in the Bill would ensure the autonomy of these schools.
349. The Committee noted a Departmental response in respect of the suggestion from NIYF. The Department argued that the NIYF currently represents the views of young people and communicates them to the Minister and that consequently a sectoral body representing young people would be an unnecessary duplication.
350. In respect of the suggestions that the roles of sectoral bodies be better defined, the Committee noted the Departmental response which argued that as sectoral bodies were to be non-statutory organisations and that it therefore would be inappropriate for the Department to set out their functions or their relationship with each other in the Bill.
351. In respect of the TRC amendment relating to Shared Education, the Committee agreed that it supported in principle measures to enhance sharing between schools and sectoral bodies etc. where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this clause in this regard at this time.
352. As there were significant differences of opinion in respect of a separate legal identity for IME schools; a sectoral body for the Voluntary Sector and in the absence of clarity on amendments relating to the definition of a “Catholic School” or the definition of an IME school, the Committee agreed to reserve its position in respect of Clause 63.

Clause 64: Supplementary, incidental, consequential, transitional provisions

353. 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. This clause allows the Department to bring forward secondary legislation so as to amend primary legislation. This kind of clause is sometimes described as a Henry VIII clause.

354. The Committee noted that regulations under this clause are subject to the most stringent form of Assembly scrutiny – draft affirmative resolution. On this basis, the Committee agreed that it would not bring forward amendments in respect of Clause 64.

Clause 65: Regulations and orders

355. This clause provides that all regulations made under this legislation should be subject to the negative resolution procedure, with the exception of: supplementary, incidental, consequential, transitory or transitional provisions set out in Clause 64; and regulations under Clause 63 to appoint the Tribunal which are both draft affirmative resolution
356. The previously agreed to amend this clause such that regulations made under Clauses 22 (Ancillary powers of ESA), 23 (Power of ESA to undertake commercial activities) and 30 (Regulations (relating to Area Planning)) should be subject to affirmative resolution.
357. The Committee also noted advice from the Examiner of Statutory Rules in respect of the delegated powers within the Bill. The Committee agreed that it was generally content with the level of scrutiny associated with the Bill as currently drafted with the exception of those clauses about which it had reserved its opinion and those amendments in respect of Clauses 22, 23 and 30 indicated above.
358. The Committee therefore agreed that other than the amendments in respect of Clauses 22, 23 and 30 it would not bring forward further amendments in respect of Clause 65 at this time.

Clause 66: Interpretation

359. This clause defines the terms used in the legislation
360. GBA suggested an amendment which would include the Heads of Agreement in a schedule of the Bill.
361. The Committee noted the Department's response that the amendment was unnecessary as the Minister intended to give effect to the Heads of Agreement through the provisions of the Bill.
362. As indicated previously, the Department had advised of a contradiction within the Heads of Agreement in respect of ESA's role as employer of all staff in grant-aided schools. A majority of Members strongly felt that necessary clarification on the role of ESA as sole employer had not been provided. A majority of Members felt that this important issue had to be resolved before the Committee could properly determine its position on clauses, schedules and amendments referencing or relating to the Heads of Agreement. It should be noted however that some Members disagreed and argued that there was no material contradiction in the Heads of Agreement and that the new arrangements in respect of delegated employment scarcely differed from the present situation. These Members suggested that any possible difficulties could be resolved through regulations.
363. Given the difference of opinion in relation to the amendment proposed by GBA, the Committee agreed to reserve its position in respect of Clause 66.

Clause 67: Minor and consequential amendments and repeals and revocations

364. This clause applies Schedules 7 and 8 which contain minor and consequential amendments and repeals and revocations – these for example remove references to the Education and Library Boards in the Education Orders.
365. The Committee agreed that it would not bring forward amendments in respect of Clause 67.

Clause 68: Commencement

366. This clause contains provisions for the commencement of the legislation. Some provisions like the Tribunal and the transfer of staff to ESA are to be given effect immediately after Royal Assent. Other provisions only come into effect after Royal Assent when the Department decides.
367. The Committee agreed that it would not bring forward amendments in respect of Clause 68.

Clause 69: Short title

368. This clause contains the short title of the legislation.
369. The Committee accepted that the Short Title was to be amended to the “Education Act (Northern Ireland) 2013”.
370. The Committee therefore agreed that it would not bring forward further amendments to Clause 69.

Schedule 1: the Education and Skills Authority

371. This schedule sets out the composition of the ESA Board and also sets out ESA's procedures in respect of finance and reporting. The ESA Board is to have representation from the Transferors of Controlled schools and the trustees of Maintained schools. The Department advised that the reference to Maintained schools included but was not limited to Catholic Maintained schools. The schedule requires the Department to consult with persons or bodies representing these interests before making the relevant appointments. Additionally the schedule allows for 4 representatives of the “community in Northern Ireland”.
372. NICCY sought clarity on how the “community in Northern Ireland” was to be represented and if it would include the diverse needs of children and young people in Northern Ireland. The Committee noted Departmental explanations that the term “community in Northern Ireland” was a well understood phrase which appeared in other legislation. The Department advised that the term was designed to ensure the inclusion of interests other than the Transferors of the Controlled sector or the trustees of the Maintained sector e.g. representatives of the diverse needs of children and young people.
373. A number of stakeholders set out suggestions for a different composition for the ESA Board. Stakeholders sought representation for: Voluntary Grammar schools; Integrated schools; IME schools; young people; and trade unions; - some suggested simply enlarging the Board to accommodate these other interests; others suggested maintaining the relative levels of representation for Controlled and Maintained schools.
374. The Department advised that most of these suggestions were contrary to the policy position agreed at the Executive in respect of the Education Bill. The Department advised that the Minister supported in principle the inclusion of a voice for young people in respect of ESA but that the Minister viewed the Education Bill as an inappropriate vehicle for this. The Department also indicated that representatives of other interests e.g. young people, trade

unions, Voluntary Grammar schools, Integrated schools or IME schools could be represented through the 4 persons who are to be representative of the “community in Northern Ireland”.

375. Some Members strongly felt that the composition of the ESA Board should include representatives of the Voluntary Grammar sector. These Members argued that this sector is responsible for the highly successful education of a large proportion of the school population and that its omission from the ESA Board was unfair and unjustifiable.
376. Other Members strongly felt that the Integrated Education and IME sectors should enjoy some level of representation on the ESA Board. Those Members felt that the popularity of both sectors was growing and was set to substantially increase in response to parental preference and that it would be unfair and unjustifiable to exclude these sectors from the ESA Board.
377. A minority of Members felt that the ESA Board was appropriately balanced and would give a fair reflection of all educational sectors. These Members argued that an explicit mandatory requirement to involve all of other sectors that had been suggested would require an unworkable enlargement of the ESA Board which would prevent it from functioning appropriately.
378. The Committee noted a submission from NICCE and CCMS which sought a revision to the schedule such that the representation for the Maintained schools would be limited to Catholic schools. NICCE/CCMS also suggested that the schedule be amended so as to include an explicit requirement for the Department to consult with sectoral bodies in determining the relevant appointments to the ESA Board. The Committee noted Departmental responses that the latter was unnecessary as the Department was required to consult with representative bodies and that Clause 63 defined those as the sectoral bodies. The Committee also noted the Departmental response in the case of the former which indicated that the representation of different sectors on the ESA Board was in line with the existing rights of those sectors and that therefore changes to the composition of the ESA Board could not be made.
379. GBA in its initial written submission suggested an amendment to the schedule to allow any grant-aided school, subject to certain criteria, to assume or retain employment powers. The Department advised that this was contrary to the policy position agreed at the Executive in respect of the Education Bill.
380. NIPSA sought an amendment which would include the guarantee that ESA staff would be permitted to be seconded to the Northern Ireland Civil Service (NICS). The Department advised that the amendment was unnecessary as secondments are an existing feature of the NICS.
381. Owing to significant differences of opinion in respect of the composition of the ESA Board, the Committee agreed to reserve its position in respect of Schedule 1.

Schedule 2: Provisions required in employment schemes

382. This schedule sets out those matters which must be included in a scheme of employment including: the staff complement, discipline and suspension policies etc. The schedule allows ESA to determine certain aspects of the employment scheme for a Controlled or Maintained school which has its delegation withdrawn.
383. ACGS sought clarity as to whether schools may adopt or amend the generic schemes of employment. NIPSA argued that the schedule should be amended to prevent schools from amending the generic scheme of employment. The Department advised that Boards of Governors may amend the generic scheme of employment or prepare their own.
384. TRC suggested that the schedule be amended to include explicit reference to a panel of assessors which would help Controlled schools to make appointments. The Department

advised that this was unnecessary as any school could request this kind of help in respect of appointments from ESA.

385. NIPSA suggested a number of amendments including the inclusion of a fixed teaching and non-teaching complement formula for schools and an amendment which would allow only ESA to appoint, dismiss and have a larger role in the disciplining of staff. The Department advised that the Bill was designed to allow Boards of Governors to appoint and dismiss staff and to have assistance from ESA if required. The Department advised that the inclusion of a teaching / non-teaching complement formula in all employment schemes was contrary to the policy agreed by the Executive.
386. SEP suggested changes in line with other amendments which would facilitate the sharing of teachers between different schools. The Department advised that the proposed amendment was unnecessary as nothing in the schedule prevented the sharing of teachers. As indicated above, the Committee agreed that it supported in principle measures to enhance sharing between schools where this would lead to the enhancement of the educational experience for pupils. However, Members felt that in the absence of policy clarity on Shared Education and consistent with its decision on Clause 2, it would not support amendments to this schedule in this regard at this time.
387. GBA suggested amendments which would prevent ESA from making appointments in respect of specified posts. The Department advised that it was for Boards of Governors to identify specified posts in their scheme of employment – Boards of Governors could indicate that no posts were specified in which case ESA would have no part in any appointments at that school.
388. GBA also sought amendments to remove the requirement for ESA staff to be present at Boards of Governors meeting relating to dismissals and the requirement that Boards of Governors consider advice from ESA in this regard. The Department advised that the GBA suggestions were at odds with the policy position agreed at the Executive in respect of the Bill.
389. GBA also suggested amendment in line with earlier amendments which would require ESA to act as the agent for Boards of Governors in respect of employment matters at the relevant school. The Department advised that the GBA suggestion was at odds with the policy position agreed at the Executive in respect of the Bill.
390. As this schedule deals with schemes of employment and touches upon ESA's role as the employer of all staff in grant-aided schools and given the Committee's concerns in respect of the Heads of Agreement and the employer / employing authority question, the Committee agreed to reserve its position in respect of Schedule 2 of the Bill.

Schedule 3: Transfer to ESA of staff employed by Boards of Governors

391. This schedule makes provision for the transfer of all staff currently employed by Boards of Governors to ESA with protections under the Transfer of Undertakings (Protection of Employment) Regulations – the TUPE regulations. This schedule gives effect to ESA becoming the sole employer of all staff in grant-aided schools.
392. GBA asked for an amendment which would ensure that staff transferring to ESA under the Bill would have terms and conditions consistent with those beginning contracts after the passage of the Bill. GBA also suggested amendments – part of a sequence of amendments – which would make ESA the agent of a Boards of Governors of Voluntary Grammar schools in respect of employment matters. The Department advised that GBA suggestions were at odds with the policy position agreed at the Executive in respect of the Bill.
393. NIPSA sought amendments which would ensure that transferring staff would enjoy the protections of TUPE in relation to pay and pensions after the transfer of staff was complete. The Department advised that its policy was to protect pay and pensions at the point of transfer. The Department indicated that NIPSA's suggestions would create a unique and

significant liability and would also set a precedent for future staff transfers which would unreasonably restrict ESA's actions as employer.

394. As this schedule deals with the transfer of staff and therefore touches upon ESA's role as the sole employer of all staff in grant-aided schools and given the Committee's concerns in respect of the Heads of Agreement and the employer / employing authority question, the Committee agreed to reserve its position in respect of Schedule 3 of the Bill.

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

395. This schedule makes provision for the transfer of assets, liabilities and staff of the Education and Library Boards; the Staff Commission; the Youth Council and the Council for Catholic Maintained Schools with protections for staff under the TUPE regulations.
396. NIPSA sought amendments which would ensure that transferring staff would enjoy the protections of TUPE in relation to pay and pensions after the transfer of staff was complete. The Department advised that its policy was to protect pay and pensions at the point of transfer. The Department indicated that NIPSA's suggestions would create a unique and significant liability and would also set a precedent for future staff transfers which would unreasonably restrict ESA's actions as employer.
397. The Department advised that a review of posts in CnaG and NICIE is underway to determine whether any posts from these organisations will transfer to ESA.
398. The Committee sought sight of the list of assets, liabilities and staff posts which are to transfer to ESA. The Department was unable to provide this information.
399. This schedule deals with the transfer of staff and therefore touches upon ESA's role as the sole employer of all staff in grant-aided schools. As the Committee did not have sight of the list of transferring assets, liabilities and staff posts and given the Committee's concerns in respect of the Heads of Agreement and the employer / employing authority question, the Committee agreed to reserve its position in respect of Schedule 4 of the Bill.

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

400. This schedule makes provision for the transfer of assets and liabilities from the Council for Catholic Maintained Schools. This allows for those assets not transferred to ESA to be transferred to the Roman Catholic church.
401. The Department advised that the assets which were not to transfer to ESA were likely to be limited to e.g. headquarters buildings and other assets not associated with schools.
402. The Committee sought sight of the list of assets, liabilities and staff posts which are to transfer to ESA and the assets which are to transfer to the Roman Catholic church. The Department was unable to provide this information.
403. This schedule deals with the transfer of assets and liabilities and therefore touches upon ESA's role as the sole employer of all staff in grant-aided schools. As the Committee did not have sight of the list of transferring assets and liabilities and given the Committee's concerns in respect of the Heads of Agreement and the employer / employing authority question, the Committee agreed to reserve its position in respect of Schedule 5 of the Bill.

Schedule 6: Transfer of certain staff of the Department

404. This schedule makes provision for the transfer of staff from the Department to ESA with protections under the TUPE regulations.
405. NIPSA sought amendments which would ensure that transferring staff would enjoy the protections of TUPE in relation to pay and pensions after the transfer of staff was complete. The Department advised that its policy was to protect pay and pensions at the point of transfer. The Department indicated that NIPSA's suggestions would create a unique and significant liability and would also set a precedent for future staff transfers which would unreasonably restrict ESA's actions as employer.
406. CnaG suggested that the schedule be changed to cover the transfer of staff to ESA from NICIE and CnaG. The Department advised that a review of posts in CnaG and NICIE is underway to determine whether any posts will transfer to ESA. The Department indicated that in the eventuality of the transfer of staff posts from either NICIE or CnaG to ESA, pay and pension provisions would be subject to TUPE protections at the time of transfer.
407. As this schedule deals with the transfer of staff by the Department, the Committee felt that it was not connected to ESA's role as sole employer of staff in grant-aided schools. The Committee therefore agreed that it would not bring forward amendments in respect of Schedule 6.

Schedule 7: Minor and consequential amendments

408. This schedule deals with minor and consequential amendments.
409. NICCE/CCMS sought amendments to change references from "Catholic Maintained" to "Catholic Voluntary" school. The Department advised that this schedule set out a definition of a Catholic Maintained school which was required for provisions in other parts of the Bill. The Committee noted that the Minister is considering bringing forward amendments which would provide an overall definition for a "Catholic school".
410. CnaG sought an amendment which would allow for a new definition of an IM school or IM unit. The Committee noted that the Minister is considering the inclusion of a revised definition of an "Irish speaking school" in line with the recent development of various forms of IM schools.
411. CnaG also sought an amendment to require proposers of new IM schools to consult with the relevant sectoral body. The Committee noted a proposed Ministerial amendment in this regard. The Committee reserved its position on the Minister's proposed amendment.
412. GBA suggested an amendment which would allow the Tribunal to adjudicate on all disputes between ESA and Boards of Governors – not just those relating to employment schemes and management schemes. Consistent with Clause 62, most Members generally felt that the Tribunal should be restricted to consideration of issues relating to employment and management Schemes.
413. As part of its scrutiny of Schedule 7 and in line with its decision in respect of Clause 18 (Establishment of Controlled Schools), the Committee gave consideration to revisions to the Education and Libraries (Northern Ireland) Order 1986 including a new article which refers to Area Education Plans.
414. One Member strongly felt that parental preference should be the deciding factor in respect of the transformation to, or establishment of, new integrated schools. It was robustly argued that the establishment or transformation of a school into an integrated school required commitment from parents, pupils and indeed school staff. It was argued that to disregard this and to prefer to follow ESA's decisions in respect of the relevant Area Plan was highly iniquitous and completely at odds with the Department's responsibility to promote the Integrated Education sector. It was suggested that the relevant provision in Schedule 7

should therefore be amended so as to change or disapply the requirement for ESA to reject Development Proposals relating to the transformation of schools into Controlled Integrated schools where they are at odds with the relevant Area Plan.

415. Other Members disagreed; some argued that the Area Planning provisions should apply equally to all sectors; others indicated their concerns in respect of Area Planning but did not support proposals to disapply provisions in the case of Integrated schools indicating that this could in effect lead to the promotion of one sector over another and that this was in itself iniquitous.
416. The Committee noted a submission from the TRC which suggested an amendment which would no longer restrict Transferors in their selection of Controlled post-primary governors to be limited to the Boards of Governors of the contributing Controlled primary schools. The Committee agreed to support in principle the proposed Ministerial amendment which would give effect to TRC's suggestion.
417. The Committee also agreed that it was content in principle with the Minister's proposed amendment to Schedule 7 which was to address a minor error in relation to Article 49 of the Education and Libraries (Northern Ireland) Order 1986.
418. In the absence of clarity on possible Ministerial amendments relating to the definition of a "Catholic School" or the definition of an IME school, as it had reserved its position in respect of Area Planning and as there were significant unresolved differences regarding the disapplication of Area Planning provisions in certain instances in respect of Integrated schools, the Committee agreed that it would reserve its position in respect of Schedule 7.

Schedule 8: Repeals

419. This schedule sets out the existing legislation which is being repealed.
420. The Committee agreed that it would not bring forward amendments in respect of Schedule 8.

Other Matters

421. The Committee considered a number of amendments which were put forward by stakeholders.
422. Some Members expressed support for an amendment put forward by GBA which would require the Bill to increase the autonomy of schools and incorporate the principles of accountable autonomy for all schools in the Bill.
423. Some Members also expressed support for a suggestion by the Ulster Farmers Union that the Bill should be amended to strengthen consultative practices in respect of school closures and that there should be a presumption against the closure of rural schools in line with the Schools (Consultation) (Scotland) Act 2010.
424. Some Members also expressed support for an amendment put forward by NICIE that the Bill should be amended to allow Special schools to be designated as Integrated schools if they so choose. These Members argued that this was a sensible provision which would merely recognise the current mixed nature of the Special school population. Other Members disagreed arguing that Special schools were outside the designations associated with the different educational sectors and that the amendment would undermine the unique status of these schools.
425. Some Members indicated that they supported in principle a suggestion from Parents Outloud and the Association of Teachers and Lecturers that parents should be permitted some flexibility in respect of the starting age for compulsory education for children. These Members indicated some support for the use in certain circumstances of a suitable pre-school setting

as an alternative to primary school. Members also indicated that they believed that the Education Bill was an inappropriate vehicle to bring forward legislative changes in this regard.

426. Members noted a suggestion from INTO that the Bill be amended so as to include the formal negotiation machinery between ESA and those employed in the education sector. Most Members did not support this amendment.
427. The Committee noted a response from the University of Ulster (UU) which included suggestions that the Bill be amended to include a more explicit focus on improving education performance; tackling access and performance inequalities; and addressing the segregated nature of the schools system.
428. The Committee noted a submission from the Association of Quality Education (AQE). AQE suggested that the Bill be withdrawn or radically amended so as to devolve power from the current Education and Library Boards and the Council for Catholic Maintained Schools to individual Boards of Governors in the Controlled and Maintained sectors, and that the present arrangements for Voluntary Grammar schools should be left untouched.

Section 3

Decisions on Clause by Clause Scrutiny of the Bill

Section 2 of this report contains the details of the Committee's 'Consideration of the Bill', either by individual clause or by groups of clauses and schedules of the Bill, where concerns and issues arose.

Section 3 gives the decisions on the Committee's scrutiny of the clauses and schedules of the Bill. Members and other readers of this report may wish to refer back to Section 2 of the report so as to gain a full understanding of the Committee's consideration and deliberations on the individual clauses and schedules, alongside the decisions set out below.

As further amendments are required from the Department, where it has agreed a clause or schedule, the Committee has done so subject to consequential amendment.

Part 1: The Education and Skills Authority

Clause 1: The Education and Skills Authority

429. The Committee agreed that, subject to consequential amendment, it was content with Clause 1 as drafted.

Clause 2: Functions and general duty of ESA

430. The Committee agreed to reserve its position in respect of Clause 2.

Clause 3: ESA to employ all staff of grant-aided schools

431. The Committee agreed to reserve its position in respect of Clause 3.

Clause 4: Employment schemes for grant-aided schools

432. The Committee agreed to reserve its position in respect of Clause 4.

Clause 5: Preparation and approval employment schemes

433. The Committee agreed to reserve its position in respect of Clause 5.

Clause 6: Reserve power of ESA to make employment scheme

434. The Committee agreed to reserve its position in respect of Clause 6.

Clause 7: Revision of employment Schemes

435. The Committee agreed to reserve its position in respect of Clause 7.

Clause 8: Procedure where ESA does not approve a submitted scheme

436. The Committee agreed to reserve its position in respect of Clause 8.

Clause 9: Effect of employment scheme

437. The Committee agreed to reserve its position in respect of Clause 9.

Clause 10: Transfer to ESA of staff employed by Boards of Governors

438. The Committee agreed to reserve its position in respect of Clause 10.

Clause 11: ESA to employ peripatetic teachers

439. The Committee agreed to reserve its position in respect of Clause 11.

Clause 12: Salaries, etc. of staff: administrative and financial arrangements

440. The Committee agreed to reserve its position in respect of Clause 12.

Clause 13: Modification of employment law

441. The Committee agreed to reserve its position in respect of Clause 13.

Clause 14: ESA to provide or secure provision of training and advisory and support services for schools

442. The Committee agreed that, subject to consequential amendment, it was content with Clause 14 as drafted.

Clause 15: ESA to provide library services to grant-aided schools and other educational establishments

443. The Committee agreed that, subject to consequential amendment, it was content with Clause 15 as drafted.

Clause 16: ESA to secure provision of educational and youth services and facilities

444. The committee agreed that, subject to consequential amendment, it was content with Clause 16 as drafted.

Clause 17: ESA to pay capital grants to voluntary and grant-maintained integrated schools

445. The Committee agreed that, subject to consequential amendment, it was content with Clause 17 as drafted.

Clause 18: Establishment of controlled schools

446. The Committee agreed to recommend to the Assembly that the clause be amended as follows:

Clause 18, page 11, line 5, add:

“in consultation with the relevant sectoral bodies –“

447. The Committee agreed that, subject to its proposed amendment and any consequential amendment, it was content with Clause 18 as drafted.

Clause 19: Responsibilities of ESA in relation to controlled schools

448. The Committee agreed to reserve its position in respect of Clause 19.

Clause 20: ESA to contract for certain works

449. The Committee agreed that, subject to a Ministerial assurance and consequential amendment, it was content with Clause 20 as drafted.

Clause 21: ESA to pay superannuation benefits of teachers

450. The Committee agreed that, subject to consequential amendment, it was content with Clause 21 as drafted.

Clause 22: Ancillary powers of ESA

451. The Committee agreed to recommend to the Assembly that the clause be amended as follows:

Clause 22, page 12, line 19

Leave out from the start of line 19 to “particular” in line 22 and insert –

‘For the purposes of discharging its functions,’

Clause 22, page 12, line 29

At end insert –

() The Department may be order amend subsection (1).

452. The Committee agreed that, subject to its proposed amendment and any consequential amendment, it was content with Clause 22 as drafted.

Clause 23: Power of ESA to undertake commercial activities

453. The Committee agreed to recommend to the Assembly that the clause be amended as follows:

Clause 23, page 12

Leave out lines 41 and 42

Clause 23, page 13, line 27

At end insert –

‘(9) The Department may be order amend the powers granted to ESA under this section.’

454. The Committee agreed that, subject to its proposed amendment and any consequential amendment, it was content with Clause 23 as drafted.

Clause 24: Area Education Plans

455. The Committee agreed to reserve its position in respect of Clause 24.

Clause 25: Preparation and revision of plans

456. The Committee agreed to reserve its position in respect of Clause 25.

Clause 26: Revocation of plans

457. The Committee agreed to reserve its position in respect of Clause 26.

Clause 27: Publicity and consultation

458. The Committee agreed to reserve its position in respect of Clause 27.

Clause 28: Involvement of relevant interests

459. The Committee agreed to reserve its position in respect of Clause 28

Clause 29: Guidance

460. The Committee agreed to reserve its position in respect of Clause 29.

Clause 30: Regulations

461. The Committee agreed to reserve its position in respect of Clause 30.

Clause 31: Dissolution of certain statutory bodies

462. The Committee agreed to reserve its position in respect of Clause 31.

Clause 32: Transfer of assets, liabilities and staff

463. The Committee agreed to reserve its position in respect of Clause 32.

Part 2: Management of Grant-Aided Schools

Clause 33: Schemes of Management

464. The Committee agreed to reserve its position in respect of Clause 33.

Clause 34: Preparation and approval of schemes of management

465. The Committee agreed to reserve its position in respect of Clause 34.

Clause 35: Reserve power of ESA to make scheme of management

466. The Committee agreed to reserve its position in respect of Clause 35.

Clause 36: Revision of schemes of management

467. The Committee agreed to reserve its position in respect of Clause 36.

Clause 37: Procedure where ESA does not approve a submitted scheme

468. The Committee agreed to reserve its position in respect of Clause 37.

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

469. The Committee agreed that, subject to consequential amendment, it was content with Clause 38 as drafted.

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

470. The Committee agreed to reserve its position in respect of Clause 39.

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

471. The Committee agreed that, subject to consequential amendment, it was content with Clause 40 as drafted.

Clause 41: Management of controlled schools

472. The Committee agreed to reserve its position in respect of Clause 41.

Clause 42: Management of maintained nursery schools

473. The Committee agreed that, subject to consequential amendment, it was content with Clause 42 as drafted.

Clause 43: Controlled school: definition

474. The Committee agreed that, subject to consequential amendment, it was content with Clause 43 as drafted.

Part 3: Inspections

Clause 44: Inspections on behalf of the Department

475. The Committee agreed to reserve its position in respect of Clause 44.

Clause 45: Powers of Inspectors

476. The Committee agreed to reserve its position in respect of Clause 45.

Clause 46: Reports and action plans

477. The Committee agreed to reserve its position in respect of Clause 46.

Clause 47: Inspection on behalf of DEL

478. The Committee agreed to reserve its position in respect of Clause 47.

Clause 48: Assessors and lay persons

479. The Committee agreed to reserve its position in respect of Clause 48.

Part 4: Functions of the Northern Ireland Council for the Curriculum, Examinations and Assessment

Clause 49: Interpretation of this part

480. The Committee agreed that, subject to consequential amendment, it was content with Clause 49 as drafted.

Clause 50: Functions of the Council in relation to the designated examinations and the statutory assessments

481. The Committee agreed to reserve its position in respect of Clause 50.

Clause 51: Function of the Council in relation to the accreditation of the designated qualifications

482. The Committee agreed to reserve its position in respect of Clause 51.

Clause 52: Other functions of the Council

483. The Committee agreed to reserve its position in respect of Clause 52.

Clause 53: Ancillary functions of the Council

484. The Committee agreed to reserve its position in respect of Clause 53.

Clause 54: Discharge by the Council of its functions

485. The Committee agreed to reserve its position in respect of Clause 54.

Part 5: Protection of children and young persons

Clause 55: Safeguarding and promoting welfare of children and young persons

486. The Committee agreed that, subject to consequential amendment, it was content with Cause 55 as drafted.

Clause 56: Duty on providers of funded pre-school education to safeguard and promote welfare of children

487. The Committee agreed that, subject to consequential amendment, it was content with Cause 56 as drafted.

Clause 57: Duty on providers of educational and youth services to safeguard and promote welfare of children

488. The Committee agreed that, subject to consequential amendment, it was content with Cause 57 as drafted.

Clause 58: Directions as to exercise of child protection duties by Board of Governors

489. The Committee agreed that, subject to consequential amendment, it was content with Cause 58 as drafted.

Clause 59: Duty of co-operation concerning welfare and protection of children and young persons

490. The Committee agreed that, subject to consequential amendment, it was content with Cause 59 as drafted.

Part 6: Miscellaneous and supplementary

Clause 60: General duty of the Department and DEL

491. The Committee agreed that, subject to consequential amendment, it was content with Cause 60 as drafted.

Clause 61: Grants for educational and youth services

492. The Committee agreed that, subject to consequential amendment, it was content with Cause 61 as drafted.

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

493. The Committee agreed to reserve its position in respect of Clause 62.

Clause 63: Sectoral Bodies

494. The Committee agreed to reserve its position in respect of Clause 63.

Clause 64: Supplementary, incidental, consequential, transitional provisions

495. The Committee agreed that, subject to consequential amendment, it was content with Cause 64 as drafted.

Clause 65: Regulations and orders

496. The previously agreed to amend this clause such that regulations made under Clauses 22 (Ancillary powers of ESA), 23 (Power of ESA to undertake commercial activities) and 30 (Regulations) should be subject to affirmative resolution.
497. The Committee agreed that, subject to its proposed amendments and any consequential amendment, it was content with Clause 65 as drafted.

Clause 66: Interpretation

498. The Committee agreed that, subject to consequential amendment and on a without prejudice basis, it was content with Cause 66 as drafted.

Clause 67: Minor and consequential amendments and repeals and revocations

499. The Committee agreed that, subject to consequential amendment, it was content with Cause 67 as drafted.

Clause 68: Commencement

500. The Committee agreed that, subject to consequential amendment, it was content with Cause 68 as drafted.

Clause 69: Short title

501. The Committee agreed that, subject to a minor amendment and any consequential amendment, it was content with Clause 69 as drafted.

Schedule 1: The Education and Skills Authority

502. The Committee agreed to reserve its position in respect of Schedule 1.

Schedule 2: Provisions required in employment schemes

503. The Committee agreed to reserve its position in respect of Schedule 2.

Schedule 3: Transfer to ESA of staff employed by Boards of Governors

504. The Committee agreed to reserve its position in respect of Schedule 3.

Schedule 4: Transfer of assets, liabilities and staff of dissolved bodies

505. The Committee agreed to reserve its position in respect of Schedule 4.

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

506. The Committee agreed to reserve its position in respect of Schedule 5.

Schedule 6: Transfer of certain staff of the Department

507. The Committee agreed that, subject to consequential amendment, it was content with Schedule 6 as drafted.

Schedule 7: Minor and consequential amendments

508. The Committee agreed to reserve its position in respect of Schedule 7.

Schedule 8: Repeals

509. The Committee agreed that, subject to consequential amendment, it was content with Schedule 8 as drafted.

Long Title

510. The Committee noted the Long Title of the Bill: "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."

511. The Committee agreed that it was content with the Long Title of the Bill as drafted.

Agreement that the Report be printed

512. At its meeting on 4 April 2013, the Committee agreed that this report be the Second Report of the Committee for Education to the Assembly for this mandate

513. The Committee also agreed that the report be printed on 8 April 2013.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

Index of Minutes of Proceedings

Education Bill 2012 – 2013

10 October 2012

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12/13 March 2013

19/20 March 2013

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Wednesday 10 October 2012

The Lecture Theatre, South West College, Omagh

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

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Paula Best (Clerical Supervisor)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)
Caroline Perry (Research Officer) for item 5 only

Apologies: Michaela Boyle MLA
Pat Sheehan MLA

11:01am The meeting commenced in public session.

5. Briefing from RalSe on the Education Bill

11:25am The briefing commenced.

Ms Caroline Perry, Assembly Research Officer, briefed the Committee on the Education Bill and highlighted a number of areas for further consideration.

The briefing was followed by a question and answer session.

11:40am The briefing ended.

6. Departmental briefing on the Education Bill

11:41am A Departmental official joined the meeting.

Mr Chris Stewart, Director of the Equality and All-Ireland Directorate, briefed the Committee on the Education Bill which was introduced to the Assembly on 2 October 2012.

The briefing was followed by a question and answer session.

12:05pm Sean Rogers left the meeting.

12:10pm The Chairperson left the meeting, and the Deputy Chairperson took the chair.

12:16pm Jonathan Craig declared an interest as a member of the Boards of Governors for a number of different schools.

Agreed: The Committee agreed to write to the Department seeking information on the anticipated management hierarchy; the description of functions and the local office structure for the Education and Skills Authority (ESA).

12:33pm The Chairperson rejoined the meeting and resumed the chair.

Agreed: The Committee agreed to write to the Department seeking further information on the timescale for the establishment of the Tribunal referred to in Clause 3 (4) of

the Bill. The Committee also agreed to seek details of which elements of current Education legislation are intended to remain in force should the Bill be enacted as currently drafted.

1.15pm The official left the meeting.

[EXTRACT]

Wednesday 14 November 2012

The Senate Chamber

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Jonathan Craig MLA
Jo-Anne Dobson MLA
Brenda Hale MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Paula Best (Clerical Supervisor)
Kerry Richards (Clerical Officer)
Ursula Savage (Bursary Student)

Apologies: Michaela Boyle MLA

10:02am The meeting commenced in public session.

5. Committee Stage of the Education Bill – motion to extend

The Committee discussed a motion to extend the Committee Stage of the Education Bill. The Committee also discussed how best to manage any additional time required for scrutiny of the Bill.

Agreed: The Committee agreed to put a motion before the Assembly to extend the Committee Stage of the Education Bill until 8 April 2013.

10:15am Jonathan Craig joined the meeting.

10:15am Jo-Anne Dobson joined the meeting.

10:18am Brenda Hale joined the meeting.

[EXTRACT]

Wednesday 21 November 2012

The Senate Chamber

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

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Paula Best (Clerical Supervisor)
Kerry Richards (Clerical Officer)
Ursula Savage (Bursary Student)

Apologies: None

10:03am The meeting commenced in public session.

6. Departmental briefing on the Education Bill

11:46am The briefing commenced.

Mr Chris Stewart, Director of Equality and All-Ireland Division, briefed the Committee on the Education Bill.

The briefing was followed by a question and answer session.

11:55am Jonathan Craig left the meeting.

12:28pm Michaela Boyle left the meeting.

Agreed: The Committee agreed to write to the Department for clarification in respect of admissions criteria for Catholic Maintained schools.

12:36pm Trevor Lunn left the meeting.

12:40pm The briefing ended.

7. Briefing from Assembly Legal Service on the Education Bill

The Committee agreed to defer the briefing from Assembly Legal Services on the Education Bill.

The Chairperson reminded Members that the written legal advice should be treated as confidential and should not be disclosed outside the Committee.

12:42pm Jo-Anne Dobson rejoined the meeting.

[EXTRACT]

Wednesday 28 November 2012

Room 21

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Brenda Hale MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Peter McCallion (Assembly Clerk)
Paula Best (Assistant Assembly Clerk)
Kerry Richards (Clerical Officer)
Ursula Savage (Bursary Student)
Eilis Haughey (Bill Office Clerk) item 9 only

Apologies: Jonathan Craig MLA
Jo-Anne Dobson MLA

9.05am The meeting commenced in open session.

5. Briefing from the Assembly Bill Office on the legislative procedures for the Committee Stage of the Education Bill

The Committee deferred consideration of this agenda item until later in the meeting.

7. Briefing from NITC on the Committee Stage of the Education Bill

9.25am The briefing commenced.

The following representatives of the Northern Ireland Teaching Council (NITC): Mr John Devlin, National Association and Schoolmasters and Union of Women Teachers (NASUWT) and Mr Gerry Murphy, Irish National Teachers' Organisation (INTO) briefed the Committee on NITC's submission to the call for evidence for the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

9.28am Brenda Hale joined the meeting.

Pat Sheehan joined the meeting

10:48am The briefing ended.

8. Briefing from NAHT on the Committee Stage of the Education Bill

10:49am The briefing commenced.

10:49pm Pat Sheehan left the meeting.

Mr Aidan Dolan, Director of Education (NAHT) and Mrs Clare Majury, NI President (NAHT) briefed the Committee on NAHT's submission to the call for evidence for the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

11:35am Michelle McIlveen declared an interest as a member of the Board of Governors of a number of schools.

11:39am The briefing ended.

11:40am The meeting moved into closed session.

The Committee considered the following deferred agenda item.

9. Briefing from the Assembly Bill Office on the legislative procedures for the Committee Stage of the Education Bill

The Committee received a briefing from Eilis Haughey from the Assembly Bill Office on the Committee Stage of the Education Bill.

Agreed: The Committee agreed to seek an explanatory briefing paper on the legislative process from the Bill Office.

Agreed: The Committee also agreed to write to the Department for Education seeking an update on progress in respect of the production of amendments to the Education Bill designed to incorporate the Heads of Agreement document.

12:02pm The meeting was suspended

12:33pm The meeting resumed in public session.

10. Briefing from ASCL on the Committee Stage of the Education Bill

12:34pm The briefing commenced.

The following representatives of the Association of School and College Leaders: Ms Debra O'Hare, President (ASCL) and principal of Wallace High School; Mr Scott Naismith, Vice President (ASCL) and principal of Methodist College; Mrs Janet Williamson, principal of Royal Belfast Academical Institution and Mr Frank Cassidy, Regional Officer (ASCL) presented ASCL's submission to the call for evidence for the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

1.20pm Sean Rodgers left the meeting.

1.28pm The briefing ended.

The Committee considered the following additional agenda item.

11. Response from the Department of Education on the Education Bill

1.28pm The briefing commenced.

Mr Chris Stewart, Director of Equality and All-Ireland Division, DE provided clarification on a number of issues raised throughout the meeting by the witnesses.

1.31pm Brenda Hale left the meeting.

Agreed: The Committee agreed to write to the Department of Education seeking clarity in respect of the following clauses:

- Clause 4(6) – Employment schemes for grant-aided schools;
- Clause 13 – Modification of employment law;
- Clause 16 – ESA to secure provision of educational and youth services and facilities;
- Clause 38 – Duties of Board of Governors in relation to achievement of high standards of educational attainment;
- Clause 39 - Appointment by ESA of governors for controlled, maintained, grant-maintained integrated and certain voluntary grammar schools; and
- 45 - Powers of inspectors.

Agreed: The Committee also agreed to write to the Department seeking further information on: the funding of unions by the Department; the Jordanstown Agreement; changes to the level of autonomy available to schools in respect of the current and previous Education Bills; and clarification in respect of posts described in the Bill as specified by schools or by ESA.

2.10pm The briefing ended.

[EXTRACT]

Wednesday 5 December 2012

Senate Chamber

Present: Mervyn Storey MLA (Chairperson)
 Danny Kinahan MLA (Deputy Chairperson)
 Michaela Boyle MLA
 Jonathan Craig MLA
 Jo-Anne Dobson MLA
 Brenda Hale MLA
 Chris Hazzard MLA
 Michelle McIlveen MLA
 Sean Rogers MLA

In Attendance: Peter McCallion (Assembly Clerk)
 Paula Best (Assistant Assembly Clerk)
 Sharon Young (Clerical Officer)
 Kerry Richards (Clerical Officer)
 Ursula Savage (Bursary Student)

Apologies: Trevor Lunn MLA

9.10am The meeting commenced in open session.

6. **Briefing from the TRC on the Committee Stage of the Education Bill**

10:21am The briefing commenced.

The following representatives of the Transferors' Representative Council (TRC): the Reverend Ian Ellis, Secretary TRC; Reverend Trevor Gribben, Member of TRC; and Miss Rosemary Rainey, Vice-Chair, TRC briefed the Committee on TRCs submission to the call for evidence for the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

10:40am Mervyn Storey declared an interest as a member of the Board of Governors of a controlled school.

10:45am Mervyn Storey declared an interest as a member of the Board of Governors of an independent Christian faith-based school.

10:57am Brenda Hale declared an interest as a member of the Presbyterian Board of Social Witness.

11:11am Jonathan Craig declared an interest as a member of the Board of Governors of three schools.

11:15am The briefing ended.

7. **Briefing from IEF and NICIE on the Committee Stage of the Education Bill**

11:17am The briefing commenced.

Ms Marie Cowan, Chairperson, Integrated Education Fund (IEF); Mr Nigel Arnold, Principal, Glengormley Integrated School, IEF; Ms Noreen Campbell, Chief Executive Northern Ireland Council for Integrated Education (NICIE); and Mr Ian McMorris, Director NICIE, briefed the Committee on their individual submissions to the call for evidence for the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

11:22am Jonathan Craig left the meeting.

11:39am Mervyn Storey declared an interest as a member of the Board of Governors of a controlled school.

Agreed: The Committee agreed that the Clerk should seek written confirmation of NICIE's proposed amendments to the Bill.

12:10pm The briefing ended.

10. Briefing from CnaG on the Committee Stage of the Education Bill

12:42pm The briefing commenced.

12:42pm Brenda Hale left the meeting.

The following representatives from Comhairle na Gaelscolaíochta: Dr Micheál Ó Duibh, Chief Executive; Noldlaig Ní Bhrollaigh, Senior Development Officer; Liam Mac Giolla Mheana, Senior Education Officer; and Caoimhín Ó Peatain, Chairperson presented CnaG's submission to the call for evidence for the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

12:55pm Jo-Anne Dobson left the meeting.

1.08pm Michaela Boyle left the meeting.

1.26pm Mervyn Story left the meeting and Danny Kinahan assumed the Chair. The Committee became inquorate; however the meeting continued under the provisions of Standing Order 49(5).

1.36pm The briefing ended.

[EXTRACT]

Wednesday 12 December 2012

Room 144, Parliament Buildings, Stormont

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Michaela Boyle MLA
Jo-Anne Dobson MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Peter McCallion (Assembly Clerk)
Paula Best (Assistant Assembly Clerk)
Sharon Young (Clerical Officer)
Kerry Richards (Clerical Officer)
Ursula Savage (Bursary Student)

Apologies: Jonathan Craig MLA
Brenda Hale MLA
Chris Hazzard MLA

9.32am The meeting commenced in open session.

4. Matters Arising

There were a number of matters arising from last week's meeting.

- 4.1 The Committee noted a response from the Department of Education providing additional detail on the admissions criteria applied by Catholic Maintained Schools.
- 4.2 The Committee noted an additional paper from the Northern Ireland Council for Integrated Education enclosing their proposed amendments to the Education Bill.
- 4.3 The Committee considered an Assembly Research paper entitled 'Education Bill: school inspection'.
- 4.4 The Committee noted a submission from the Western Education and Library Board to the Committee Stage of the Education Bill.
- 4.5 The Committee noted an additional submission from the Integrated Education Fund to the Committee Stage of the Education Bill.
- 4.6 The Committee noted a response from the Department of Education in respect of the Committee Stage of the Education Bill.

Agreed: The Committee agreed to seek legal advice in respect of Mr Justice Treacy's ruling relating to Colaiste Feirste and the Department

9.57am Jo-Anne Dobson joined the meeting.

11:11am Jo-Anne Dobson left the meeting.

8. Briefing from NICCE and CCMS on the Committee Stage of the Education Bill

11:26am The briefing commenced.

Bishop Donal McKeown, Chairperson Northern Ireland Commission for Catholic Education (NICCE); Father Tim Bartlett, NICCE and Sister Eithne Woulfe NICCE and Mr Jim Clarke, Chief Executive Council for Catholic Maintained Schools (CCMS) and Mr Gerry Lundy, Deputy Chief Executive CCMS attended the Committee meeting.

Agreed: Owing to time pressures, the Committee agreed to discontinue the briefing and invite NICCE and CCMS to a subsequent meeting.

Agreed: The Committee also agreed that it was content for NICCE and CCMS to make joint or separate oral submissions to the Committee Stage of the Education Bill.

12:19pm The meeting resumed in public session.

12:19pm Jo-Anne Dobson re-joined the meeting.

Briefing from the GBA on the Committee Stage of the Education Bill

12:19pm The briefing commenced.

The following representatives from the Governing Bodies Association (GBA); Mary-Lou Winchbourne, Director GBA; Brett Lockhart, GBA; Stephen Gowdy, GBA; and Carol McCann, GBA presented the GBA's submission to the call for evidence for the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

Agreed: The Committee agreed to write to the Department asking that it be provided with an updated ESA Business Plan.

1.02pm Michaela Boyle left the meeting.

1.12pm Danny Kinahan left the meeting.

1.15pm Trevor Lunn left the meeting.

1.34pm The briefing ended.

2. Response from the Department of Education on the Education Bill

Agreed: Owing to time constraints, the Committee agreed to defer this briefing.

[EXTRACT]

Wednesday 9 January 2013

Room 21, Parliament Buildings, Stormont

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Jonathan Craig MLA
Jo-Anne Dobson MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA

In Attendance: Peter McCallion (Assembly Clerk)
Paula Best (Assistant Assembly Clerk)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)

Apologies: Michaela Boyle MLA
Brenda Hale MLA
Pat Sheehan MLA

10:00am The meeting commenced in open session.

4. **Matters Arising**

There were a number of matters arising from last week's meeting.

- 4.1 The Committee noted an additional paper from the Northern Ireland Council for Integrated Education enclosing their proposed amendments to the Education Bill.
- 4.2 The Committee noted correspondence from a member of staff at a Voluntary Grammar School and a concerned parent regarding the Education Bill.

Agreed: The Committee agreed to write to the Department seeking a copy of the EQIA or Equality Screening document for the Education Bill.

Agreed: The Committee agreed to write to the Department seeking a written response to all of the queries raised by stakeholder in written evidence and raised by stakeholders and Members during the oral evidence sessions on the Education Bill.

5. **Briefing from NICCE and CCMS on the Committee Stage of the Education Bill**

10:07am The briefing commenced.

Bishop Donal McKeown, Chairperson Northern Ireland Commission for Catholic Education (NICCE); Father Tim Bartlett, NICCE and Dr Muredach Dynan, NICCE and Bishop John McAreavey, Chairperson Council for Catholic Maintained Schools (CCMS); Mr Jim Clarke, Chief Executive CCMS; and Mr Gerry Lundy, Deputy Chief Executive CCMS presented their submission to the call for evidence for the Committee Stage of the Education Bill.

11:36am Father Tim Bartlett left the meeting.

11:43am Sean Rogers declared an interest as a member of the Board of Governors of a maintained school.

Agreed: The Committee agreed to write to the Southern Education and Library Board (SELB) to determine whether an article published in the Irish News on 5 January 2013 on the Education Bill represented the views of the SELB.

12:14pm The briefing ended.

6. Briefing from the WELB on the Committee Stage of the Education Bill

12:16pm The briefing commenced.

Reverend Robert Herron, Chairperson, Western Education and Library Board (WELB); Mr Barry Mulholland, Chief Executive, WELB; and Ms Helen Duffy, Head of Human Resources, WELB/South Eastern Education and Library Board presented WELB's submission to the call for evidence for the Committee Stage of the Education Bill

1.01pm The briefing ended.

7. Departmental response on the Education Bill

1.02pm The briefing commenced.

Mr Chris Stewart, Director of Equality and All-Ireland Division, DE provided clarification on a number of issues raised during the evidence session.

Agreed: The Committee agreed to write to the Department to ask for additional information on the following:

- whether the Bill as drafted will alter the requirement for teachers in Catholic primary schools to obtain the Catholic Teaching Certificate;
- clarification as to whether, following the amalgamation of a controlled school and a maintained school, teachers in the new school would be required to obtain the Catholic Teaching Certificate;
- confirmation that ESA will carry all employer liability;
- clarification as to the interim arrangements when a scheme of employment is in the process of referral to the Independent Tribunal;
- clarification as to whether the Department can use Article 101 or other powers to overrule the Independent Tribunal;
- clarification as to the final arbiter in respect of Clause 9 and the determination as to whether a Board of Governors (BoGs) has given effect to its employment scheme;
- clarification as to whether can ESA compel a BoGs to comply with any particular action;
- information as to whether and how Youth Services will be represented on the ESA Board; and
- clarification as to whether CCEA has a recruitment freeze in place and whether it is included in the so-called ESA-affected group and if its staff are included in ESA employment trawls.

Agreed: The Committee also agreed to write to the Department requesting that all Departmental drafting amendments and other amendments be made available to the Committee for its consideration as soon as possible.

1.26pm The briefing ended.

[EXTRACT]

Wednesday 16 January 2013

Room 21, Parliament Buildings, Stormont

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

In Attendance: Peter McCallion (Assembly Clerk)
Paula Best (Assistant Assembly Clerk)
Sharon Young (Clerical Officer)
Kerry Richards (Clerical Officer)
Ursula Savage (Bursary Student)

10:01am The meeting commenced in open session.

10:08am Jonathan Craig left the meeting.

4. **Matters Arising**

There were a number of matters arising from last week's meeting.

4.1 The Committee noted an additional paper from the Transferor Representatives' Council regarding the Education Bill and nomination rights in amalgamated controlled schools.

Agreed: The Committee agreed to forward this correspondence to the Department for comment on the specific issue raised.

4.2 The Committee noted a submission from the Association of Controlled Grammar Schools to the Committee's call for evidence to the Education Bill.

Agreed: The Committee agreed to write to the Committee for OFMDFM seeking its views on the relevant clauses of the Education Bill.

10:36am Jonathan Craig re-joined the meeting.

11:02am Jo-Anne Dobson left the meeting.

6. **Briefing from the Catholic Heads Association on the Committee Stage of the Education Bill**

11:34am The briefing commenced.

Ms Carol McCann, principal of St Dominic's Grammar School, Belfast and Chairperson, Catholic Heads Association; Mr Dermot Mullan, principal of Our Lady and St. Patrick's College, Knock and Mr David Lambon, principal of St Malachy's College, Belfast presented the Catholic Heads Association submission to the call for evidence for the Committee Stage of the Education Bill

- Agreed:** The Committee agreed to write to the Department to ask for additional information on the following:
- the TUPE arrangements for teachers with differing terms and conditions in voluntary grammar schools;
 - clarification on who is to take responsibility for the drawing-up of teachers' terms and conditions in voluntary grammar schools following passage of the Bill;
 - clarification on the current submitting authority in voluntary grammar schools;
 - details of the provisions in the Bill which require employment schemes and schemes of management to be compatible;
 - details of the provisions within the Bill for the above schemes to be compatible with governance arrangements in schools; and
 - a response to the suggestion that the Bill should require CCEA to be a non-profit making organisation.

11:49am Brenda Hale left the meeting.

12:06pm Jo-Anne Dobson re-joined the meeting.

12:55pm The briefing ended.

7. Departmental response on the Education Bill

12:55pm The briefing commenced.

Mr Chris Stewart, Director of Equality and All-Ireland Division, DE provided clarification on a number of issues raised during the evidence session.

1.05pm The briefing ended.

[EXTRACT]

Wednesday 23 January 2013

Room 21, Parliament Buildings, Stormont

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Michaela Boyle MLA
Jonathan Craig MLA
Jo-Anne Dobson MLA
Brenda Hale MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Peter McCallion (Assembly Clerk)
Paula Best (Assistant Assembly Clerk)
Sharon Young (Clerical Officer)
Kerry Richards (Clerical Officer)
Jonathan McMillen (Legal Services) - item 7 only

Apologies: Chris Hazzard MLA

9.48am The meeting commenced in open session.

4. **Matters Arising**

There were a number of matters arising from last week's meeting.

- 4.1 The Committee noted a response from the Committee for Employment and Learning regarding the Committee's call for evidence for the Education Bill.
- 4.2 The Committee noted correspondence from Braidside, Portaferry, Drumragh, Forge, Millside and Shimna Integrated schools regarding the Education Bill.

9.52am Jo-Anne Dobson joined the meeting.

- 4.3 The Committee noted correspondence from the Minister on the appointments process for the ESA Board.

9.54am Sean Rogers joined the meeting.

5. **Briefing from the Association of Controlled Grammar Schools on the Committee Stage of the Education Bill**

9.58am The briefing commenced.

9.59am Brenda Hale joined the meeting.

10:01am Jonathan Craig joined the meeting.

10:02am Trevor Lunn joined the meeting.

Mr Stephen Black, Antrim Grammar School, Chairperson of the Association of Controlled Grammars (ACGS); Mr David Knox, Ballyclare High School; Mr Robin McLoughlin, Grosvenor Grammar School; and Mr Raymond Pollock OBE, Banbridge Academy presented the ACGS's submission to the call for evidence for the Committee Stage of the Education Bill.

10:28am Brenda Hale left the meeting.

11:07am Jonathan Craig declared an interest as Chairman of a Board of Governors of a controlled school.

11:33am The briefing ended.

6. Briefing from the Northern Ireland Voluntary Grammar Schools Bursars' Association on the Committee Stage of the Education Bill

11:34am The briefing commenced.

11:44am Brenda Hale re-joined the meeting.

Dr Christine Byrnes, Sullivan Upper School, Holywood and Chairperson, Northern Ireland Voluntary Grammar Schools Bursars' Association (NIVGSBA); Mr John Robinson, Methodist College, Belfast, Vice-Chairperson NIVGSBA; Ms Elisabeth Hull, Belfast Royal Academy; and Mr Shane McBrien, St Malachy's College, Belfast presented the NIVGSBA's submission to the call for evidence for the Committee Stage of the Education Bill

12:27pm Michaela Boyle left the meeting.

12:33pm The briefing ended.

12:34am The meeting moved into closed session.

12:34pm Trevor Lunn left the meeting.

7. Briefing from Assembly Legal Services regarding employment issues in the Education Bill.

12:34pm The briefing commenced.

The Committee considered legal advice regarding employment issues in the Education Bill.

12:52pm Danny Kinahan left the meeting.

12:58pm Brenda Hale left the meeting.

1.00pm The briefing ended.

8. Departmental response on the Education Bill

Agreed: The Committee agreed to defer the Departmental briefing.

Agreed: The Committee agreed to write to the Department seeking the following information:

- following passage of the Education Bill will, controlled grammar schools be able to pay honoraria;
- following passage of the Education Bill, will controlled grammar schools be able to procure services without the support or permission of ESA;
- an explanation of the difference between the power and role of inspectors in respect of schools and in respect of further education colleges;
- a summary of the current powers held by school inspectors;
- commentary on Clause 38(2) of the Bill – specifically a description of the actions ESA is to undertake to promote high standards in schools;
- confirmation as to whether ESA will they take a larger role in ensuring good health and safety practice in voluntary schools in-line with ESA's responsibility for payment of liability insurance,

- confirmation as to whether the Department is to bring forward a Statutory Rule which (like the Education Order 1991) will clarify the employment roles of BoGs and ESA – specifically to allow a BoG to give effect to an instruction from a court regarding employment.
- commentary as to whether ESA's status as the single employer will lead to a change in terms and conditions for non-teaching staff and consequently wage inflation for non-teaching staff.

[EXTRACT]

Wednesday 30 January 2013

Senate Chamber, Parliament Buildings, Stormont

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Jonathan Craig MLA
Jo-Anne Dobson MLA
Brenda Hale MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Stella McArdle (Assembly Clerk)
Paula Best (Assistant Assembly Clerk)
Sharon Young (Clerical Supervisor)
Kerry Richards (Clerical Officer)
Tara Caul (Legal Services) - item 5 only

Apologies: Michaela Boyle MLA

9.33am The meeting commenced in closed session.

4. **Matters Arising**

There were a number of matters arising from last week's meeting.

4.1 The Committee noted correspondence from Hazelwood, North Coast, Ulidia, Crumlin, Dungannon College, Maine, Bridge, Ballycastle, Forthill, Glengormley, New-Bridge, Rowandale, Sperrin, Blackwater and Oakgrove Integrated schools and APTIS regarding the Education Bill.

4.2 The Committee noted correspondence from the Committee for OFMDFM requesting a briefing from the Department of Education on relevant clauses of the Education Bill.

Agreed: The Committee agreed to forward the request to the Department of Education.

4.3 The Committee noted correspondence from the Committee for OFMDFM to OFMDFM requesting a briefing on the Education Bill and indicating that OFMDFM should correspond directly with the Committee for Education regarding the Education Bill.

4.4 The Committee noted correspondence from the Department of Education regarding TUPE arrangements for teachers.

Agreed: The Committee agreed to write again requesting early sight of all Departmental amendments to the Education Bill.

5. **Briefing from Assembly Legal Services – Justice Treacy's judgement regarding DE and Colaiste Feirste**

9.42am The briefing commenced.

The Committee considered legal advice.

Agreed: The Committee agreed to seek further legal advice on related issues.

Agreed: The Committee also agreed to write to the Department seeking:

- its views on its commitments to Irish Medium Education;

- how its views on its commitments to Irish Medium Education have changed following the Colaiste Feirste judgement;
- the actions the Department has taken since the judgement; and
- the legal costs associated with the case.

The Committee noted that it had previously obtained a breakdown of all of the education legislation which is to be changed by the Education Bill.

10:26am Brenda Hale left the meeting.

10:28am The briefing ended.

10:29am The meeting moved into open session.

11:00am Michelle McIlveen left the meeting

12:10pm Pat Sheehan left the meeting.

7. Education Bill: Briefing from the Department

12:15pm The briefing commenced.

Mr Chris Stewart, Director of Equality and All-Ireland Division, DE provided clarification on a number of issues.

The Committee noted that it was to receive information from the Department comparing the powers of the Education and Training Inspectorate at present and its intended powers following the establishment of ESA.

Agreed: The Committee agreed to follow up on correspondence sent to the Minister for Education and the First Minister and deputy First Minister regarding the Education Bill and Heads of Agreement.

12:51pm The briefing ended.

[EXTRACT]

Wednesday 6 February 2013

Senate Chamber, Parliament Buildings, Stormont

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

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Paula Best (Clerical Supervisor)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)

Apologies: None

9.40am The meeting commenced in public session.

4. **Matters Arising**

There were a number of matters arising from last week's meeting.

- 2.1. The Committee noted correspondence from the Northern Ireland Council for Integrated Education suggesting an additional amendment to the Education Bill which would allow Special Schools to be designated as integrated.
- 2.2. The Committee noted correspondence from Windmill Integrated School regarding the Education Bill.
- 2.3. The Committee noted two items of correspondence from the Governing Bodies Association (GBA) expressing its views on a number of aspects of the Education Bill.

Agreed: The Committee agreed that all these items of correspondence should be included in its report on the Education Bill.

Agreed: The Committee also agreed to request legal advice on matters raised by the GBA.

10:15am Jo-Anne Dobson left the meeting.

6. **Briefing from the Northern Ireland Youth Forum on the Education Bill.**

10:30am Representatives joined the meeting.

Mr Chris Quinn, Director, Northern Ireland Youth Forum (NIYF); Mr Martin McAuley, Chairperson, NIYF; Ms Rhíannon Ní Cheallaigh, Vice Chairperson, NIYF; and Mr Declan Campbell, presented the NIYF's submission to the call for evidence for the Committee Stage of the Education Bill.

10:33am Jo-Anne Dobson rejoined the meeting.

The briefing was followed by a question and answer session.

Agreed: The Committee agreed to write to the Department for clarification of the impact of the Education Bill on youth services as set out in the relevant Education Orders.

11:34am Representatives left the meeting.

7. Education Bill: Informal Clause-by-Clause Scrutiny

11:37am A Departmental official joined the meeting.

Mr Chris Stewart, Director of the Equality and All-Ireland Directorate, DE was in attendance to provide further information on the Education Bill as required.

The Committee commenced its informal Clause by Clause scrutiny of the Education Bill.

Clause 1

The Committee considered suggested amendments that the acronym, ESA, should not be used with reference to the Education and Skills Authority; and that the word 'Skills' should not be included in the name of the authority.

Agreed: The Committee informally agreed that it did not support either of these proposed amendments.

Agreed: The Committee informally agreed that it was content with Clause 1 as drafted.

Clause 2:

The Committee considered suggestions that Clause 2(2) should be amended:

- a. to include a duty on ESA to promote shared education;
- b. to remove the duty on ESA to contribute towards the spiritual development of children and young persons;
- c. so that the duty on ESA to contribute towards the spiritual development of children and young persons would have a guaranteed level of curriculum support which might be delivered through the function of a Sectoral Support Body;
- d. so that there should be a duty on ESA to encourage and facilitate the development of Irish Medium Education;

Agreed: The Committee agreed to reconsider proposed amendments relating to the promotion of shared education and Irish Medium Education pending receipt of legal advice.

Agreed: The Committee informally agreed that it did not support the amendment relating to the removal of the duty on ESA in respect of the spiritual development of children.

Agreed: The Committee agreed to reconsider the proposed amendment relating to curricular support for religious education pending a response from the Department on its current obligations in law to support religious education.

The Committee considered a suggested amendment to Clause 2(2)e which would require clarification to be included in the Bill in respect of the advice provided by ESA to the Department on matters relating to schools, educational and youth services.

Agreed: The Committee informally agreed that it did not support the proposed amendment relating to ESA's advice to the Department in Clause 2(2)e.

Agreed: The Committee agreed to seek legal advice on Clause 2(3) which requires ESA to treat schools on the same basis regardless of whether their premises are vested in ESA or otherwise.

The Committee discussed its current work programme and the additional workload presented by its scrutiny of the Education Bill.

Agreed: The Committee agreed to schedule additional meetings on Tuesday mornings over the next few weeks.

1:08pm The Departmental official left the meeting.

[EXTRACT]

Wednesday 13 February 2013

Senate Chamber, Parliament Buildings, Stormont

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Michaela Boyle MLA
Jonathan Craig MLA
Jo-Anne Dobson MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Paula Best (Clerical Supervisor)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)
Jonathan McMillen – Assembly Legal Services (Item 2 only)
Simon Kelly - Assembly Legal Services (Item 2 only)
Caroline Perry – Assembly Research Officer (Item 8 only)

Apologies: Brenda Hale MLA

9.36am The meeting commenced in private session.

1. Briefing from Assembly Legal Services

9.37am Assembly Legal Services joined the meeting.

Representatives of Assembly Legal Services briefed the Committee on the Department's duties in current legislation in respect of Irish Medium Education and how this is to change under the Education Bill as drafted.

9.46am Pat Sheehan left the meeting.

Assembly Legal Services also provided clarification on the concept of agency as set out in evidence from the Governing Bodies Association in respect of the Education and Skills Authority and Boards of Governors.

9.53am Jo-Anne Dobson joined the meeting.

9.58am Michelle McIlveen joined the meeting.

The briefing was followed by a question and answer session.

10:22am Assembly Legal Services left the meeting

5. Matters Arising

There were a number of matters arising from last week's meeting.

- 5.1 The Committee noted correspondence from the Committee for Culture, Arts and Leisure enclosing a response from the Department of Culture, Arts and Leisure in relation to the Education Bill.

5.2 The Committee noted correspondence from the Minister for Education to integrated schools regarding the Education Bill.

5.3 The Committee noted a response from the Department on the impact of the Education Bill on Youth Services and on the Department's obligations in respect of religious education.

Agreed: The Committee agreed to forward the correspondence relating to Youth Services to the Northern Ireland Youth Forum for information.

7. Education Bill: Informal Clause-by-Clause Scrutiny

10:57am Departmental officials joined the meeting.

Mr Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were in attendance to provide further information on the Education Bill as required.

The Committee continued its informal Clause by Clause scrutiny of the Education Bill.

Clause 2

Agreed: The Committee agreed to park consideration of Clause 2 (Functions and general duty of ESA) pending receipt of legal advice on Clause 2(3).

Clauses 3-9

Agreed: The Committee agreed that pending a response from the Minister and/or OFMDFM on ESA's role as sole employer of all school staff and the Heads of Agreement, the Committee would park consideration of:

Clause 3 ESA to employ all staff of grant-aided schools

11:02am Jonathan Craig left the meeting.

Clause 4 Employment schemes for grant-aided schools

Clause 5 Preparation an approval of employment schemes

Clause 6 Reserve power of ESA to make employment scheme

Clause 7 Revision of employment scheme

Clause 8 Procedure where ESA does not approve a submitted scheme

Clause 9 Effect of employment scheme

Agreed: The Committee also agreed that if a response on the employment and Heads of Agreement issues was not forthcoming within 10 working days, it would consider seeking a further extension to the Committee Stage of the Education Bill.

Clauses 10 to 12

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 10 Transfer to ESA of staff employed by Boards of Governors

Clause 11 ESA to employ peripatetic teachers

Clause 12 Salaries etc. of staff: administrative and financial arrangements

Clause 13

Agreed: The Committee agreed that pending a response from the Department on its work to update the Education (Modification of Statutory Provisions Relating to Employment) Order (NI) 1991, it would park its consideration of:

Clause 13 Modification of employment law

11:30am Danny Kinahan left the meeting.

Clauses 14 to 32

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 14 ESA to provide or secure the provision of training and advisory support and services for schools

Clause 15 ESA to provide library services to grant-aided schools and other educational establishments

Clause 16 ESA to secure provision of educational and youth services and facilities

Clause 17 ESA to pay capital grants to voluntary and grant-maintained integrated schools

Clause 18 Establishment of controlled schools

Clause 19 Responsibilities of ESA in relation to controlled schools

Clause 20 ESA to contract for certain works

Clause 21 ESA to pay superannuation benefits of teachers

Clause 22 Ancillary powers of ESA

Clause 23 Power of ESA to undertake commercial activities

Clause 24 Area Education Plans

12:02pm Pat Sheehan rejoined the meeting.

Clause 25 Preparation and revision of plans

Clause 26 Revocation of plans

Clause 27 Publicity and consultation

Clause 28 Involvement of relevant interests

Clause 29 Guidance

Clause 30 Regulations

Clause 31 Dissolution of certain statutory bodies

Clause 32 Transfer of assets, liabilities and staff

Agreed: The Committee agreed to continue its informal clause by clause scrutiny in private session on Tuesday 19 February at 9.30am.

12:24pm Departmental officials left the meeting.

12:24pm The meeting moved into public session.

9. Forward Work Programme

The Committee considered its draft Forward Work programme which included a number of additional meetings on Tuesday mornings to facilitate its on-going scrutiny of the Education Bill.

[EXTRACT]

Tuesday 19 February 2013 and Wednesday 20 February 2013 Room 30 and The Senate Chamber

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

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)
Jonathan McMillen – Assembly Legal Services (Item 1 only)

Apologies: None

9.35am The meeting commenced in private session.

1. Briefing from Assembly Legal Services

9.36am Assembly Legal Services joined the meeting.

9.37am Pat Sheehan joined the meeting.

A representative of Assembly Legal Services briefed the Committee on the duties of ESA, as provided by Clause 2(3) of the Education Bill, to treat schools on the same basis whether or not their premises are vested in ESA.

The briefing was followed by a question and answer session.

Agreed: The Committee agreed to request further legal advice on Clauses 2(3) and 24-30 which deal with Area Planning.

9.59am Assembly Legal Services left the meeting.

10:00am Jo-Anne Dobson, Chris Hazzard and Brenda Hale left the meeting.

2. Matters Arising

There were a number of matters arising from last week's meeting.

- 3.1 The Committee noted correspondence from the Minister relating to the provision of evidence requested by the Committee in the course of its scrutiny of the Education Bill.
 - 3.2 The Committee noted a response from the Department outlining its legal obligations to the promotion of Irish Medium Education.
 - 3.3 The Committee noted correspondence from the Department in response to a range of queries raised by the Committee in relation to the provisions of the Education Bill.
-

3.4 The Committee considered correspondence issued by the Department to education stakeholders and school employers seeking feedback on draft model schemes of employment and management.

Agreed: The Committee agreed to request a briefing from the Department on the draft model schemes.

3.5 The Committee noted correspondence from INTO, forwarded by the Committee for Employment and Learning, on issues relating to the impact of the Education Bill on employment law.

10:03am Chris Hazzard rejoined the meeting.

4. Education Bill: Informal Clause-by-Clause Scrutiny

10:05am Departmental officials joined the meeting

10:05am Michaela Boyle joined the meeting.

Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were in attendance to provide further information on the Education Bill as required.

The Committee continued its informal Clause by Clause scrutiny of the Education Bill.

Clauses 33-37: Schemes of management for grant-aided schools

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 33: Schemes of Management

Clause 34: Preparation and approval of schemes of management

Clause 35: Reserve power of ESA to make schemes of management

Clause 36: Revision of schemes of management

Clause 37: Procedure where ESA does not approve a submitted scheme

Agreed: The Committee also agreed to write to the Department requesting a commentary which clearly distinguishes technical amendments and provisions which are a restatement of the existing Education Orders from policy changes in the Education Bill.

Clauses 38 to 43: Boards of Governors of grant-aided schools

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 38: Duties of Boards of Governors in relation to achievement of high standards of educational attainment

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

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

Clause 41: Management of controlled schools

10:40am Jo- Anne Dobson rejoined the meeting.

Clause 42: Management of maintained nursery schools

Clause 43: Controlled schools: definition

10:42am Brenda Hale rejoined the meeting.

Clauses 44 to 48: Inspections

10:46am Jonathan Craig joined the meeting.

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 44: Inspections on behalf of the Department

Clause 45: Powers of inspectors

Clause 46: Reports and action plans

Clause 47: Inspections on behalf of DEL

Clause 48: Assessors and lay persons

Agreed: The Committee agreed to seek clarification from the Department as to how the Education and Training Inspectorate is to monitor and assess the governance and management arrangements of schools

Agreed: The Committee agreed to write to the Department to request details of the arrangements currently in place for the appointment and assignment of lay persons who accompany inspectors and assist in inspections of schools.

Agreed: The Committee agreed to advise the Committee for Employment and Learning that it is understood that the Minister for Employment and Learning proposes to bring a number of amendments to the Executive regarding the role of the Education and Training Inspectorate in relation to private providers of further educational services.

11:05am Pat Sheehan left the meeting.

Clauses 49 to 54: Functions of the Northern Ireland Council for the Curriculum, Examinations and Assessment (CCEA)

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 49: Interpretation of this Part

Clause 50: Functions of the Council in relation to the designated examinations and the statutory assessments

Clause 51: Functions of the Council in relation to the accreditation of the designated qualifications

Clause 52: Other powers of the Council

Clause 53: Ancillary functions of the Council

Clause 54: Discharge by the Council of its functions

Agreed: The Committee agreed to write to CCEA to ascertain the nature and extent of its current engagement with industry, commerce and the professions, and whether this will alter following the passage of the Bill.

Clauses 55 to 59: Protection of children and young persons

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 55: Safeguarding and promoting welfare of children and young people

Clause 56: Duty on providers of funded pre-school education to safeguard and promote welfare of children

Clause 57: Duty of providers of educational and youth services to safeguard and promote welfare of children

Clause 58: Directions as to exercise of child protection duties by Board of Governors

Clause 59: Duty of co-operation concerning welfare and protection of children and young persons

11:38am Michaela Boyle left the meeting.

Clauses 60 to 69: Miscellaneous and supplementary

Agreed: The Committee agreed that it was content to informally scrutinise the following clauses of the Education Bill:

Clause 60: General duty of the Department and DEL

Clause 61: Grants for educational and youth services, etc.

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

11:43am Pat Sheehan rejoined the meeting.

Clause 63: Sectoral bodies

Clause 64: Supplementary, incidental, consequential, transitional provisions etc.

11:44am Danny Kinahan left the meeting.

Clause 65: Regulations and orders

Clause 66: Interpretation

Clause 67: Minor and consequential amendments and repeals and revocations

Clause 68: Commencement

Clause 69: Short title

11:52am The Chairperson suspended the meeting.

9.31am The meeting resumed in private session on Wednesday 20 February 2013 in the Senate Chamber. The following Members were in attendance: Mervyn Storey, Danny Kinahan, Jonathan Craig, Jo-Anne Dobson, Chris Hazzard, Trevor Lunn, Sean Rogers.

The Committee continued its informal Clause by Clause scrutiny of the Education Bill.

9.35am Departmental officials joined the meeting.

Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were again in attendance to provide further information on the Education Bill as required.

Schedules 1 to 8

Agreed: The Committee agreed that it was content to informally scrutinise the following schedule of the Education Bill:

Schedule 1: The Education and Skills Authority

9.48am Michelle McIlveen joined the meeting.

9.54am Brenda Hale joined the meeting.

9.58am Michaela Boyle joined the meeting.

Agreed: The Committee agreed that pending a response from the Minister and/or OFMDFM on ESA's role as sole employer of all school staff and the Heads of Agreement, the Committee would park consideration of:

Schedule 2: Provisions required in employment schemes

10:05am Pat Sheehan joined the meeting.

Agreed: The Committee agreed that it was content to informally scrutinise the following schedules of the Education Bill:

Schedule 3: Transfer to ESA of staff employed by Boards of Governors

Schedule 4: Transfer of assets, liabilities and staff of dissolved bodies

10:31am Pat Sheehan left the meeting.

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

Schedule 6: Transfer of certain staff of the Department

Schedule 7: Minor and consequential amendments

Schedule 8: Repeals

Agreed: The Committee agreed to write to the Department for clarification of liability insurance held by CCMS. The Committee also agreed to request a detailed list of assets and staff posts to be transferred as a consequence of the passage of the Education Bill.

Miscellaneous proposed amendments

The Committee considered miscellaneous comments and proposals put forward in stakeholder submissions.

Agreed: The Committee agreed to request Assembly Research to prepare a paper on the provisions of the Schools Bill (Scotland).

11:02am Danny Kinahan left the meeting.

11:12am Departmental officials left the meeting.

11:12am The meeting moved into public session.

7. Further Matters Arising

- 7.1 The Committee noted tabled correspondence sent by the Minister to Round Tower and Cranmore Integrated schools, addressing issues raised regarding provisions in the Education Bill.
- 7.2 The Committee considered tabled correspondence from the non-teaching unions in the education sector requesting an opportunity to brief the Committee on the Education Bill.

11:20am Danny Kinahan rejoined the meeting.

Agreed: The Committee agreed to arrange an informal briefing session with the non-teaching unions.

[EXTRACT]

Wednesday 27 February 2013

The Senate Chamber

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

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)
Jonathan McMillen – Assembly Legal Services (Item 1 only)

Apologies: None

9.34am The meeting commenced in private session.

1. Briefing from Assembly Legal Services on the Education Bill

9.35am Assembly Legal Services joined the meeting.

9.36am Jonathan Craig joined the meeting.

9.37am Michaela Boyle joined the meeting.

9.38am Pat Sheehan left the meeting.

9.38am Michelle McIlveen joined the meeting.

A representative of Assembly Legal Services briefed the Committee on the relationship between Clause 2(3), which covers ESA's duty to treat schools on the same basis whether or not their premises are vested in ESA, and Clauses 24 to 30, which set out the duties and functions of ESA in relation to area planning.

The briefing was followed by a question and answer session.

9.43am Assembly Legal Services left the meeting.

9.47am Brenda Hale joined the meeting.

9.52am Jo-Anne Dobson joined the meeting.

Agreed: The Committee agreed to obtain procedural advice on the Committee Stage of the Education Bill.

10:01am The meeting moved into public session.

3. Chairperson's Business

3.5 The Chairperson referred to the Committee's informal briefing session on the Education Bill with representatives of the non-teaching trade unions which took place on 25 February 2013.

6. Departmental Briefing on draft Model Schemes of Employment and Management

10:19am Departmental officials joined the meeting

Chris Stewart, Director, Equality and All-Ireland Directorate; Paul Price, Director, ESA Delivery; Mervyn Gregg, Head of Education Governance Team; and Robbie McGreevy, HR Director Designate, ESA; briefed the Committee on the draft Model Schemes of Employment and Management.

10:31am Brenda Hale rejoined the meeting.

The briefing was followed by a question and answer session.

10:48am The Chairperson left the meeting.

10:48am The Deputy Chairperson, Danny Kinahan, assumed the Chair.

10:48am Jonathan Craig left the meeting.

10:48am Michelle McIlveen left the meeting.

11:08am Brenda Hale left the meeting.

11:09am Departmental officials left the meeting.

7. Education Bill: Continuation of Informal Clause by Clause Scrutiny

11:09am Departmental officials joined the meeting.

Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were in attendance to provide further information on the Education Bill as required.

The Committee continued its informal Clause by Clause scrutiny of the Education Bill.

Clause 10: Transfer to ESA of staff employed by Boards of Governors

Agreed: The Committee informally agreed that it was content with Clause 10 as drafted.

Agreed: The Committee also agreed to give further consideration to CnaG's suggested amendment, in respect of a separate legal identity for Irish Medium Education, during its scrutiny of Clause 63.

11:24am Departmental officials left the meeting.

11.24am The Chairperson suspended the meeting.

11:31am The meeting resumed in private session.

Agreed: The Committee agreed to suspend its informal scrutiny of the Education Bill because of the absence of a significant number of Members.

11:34am The meeting moved into public session.

9. Forward Work Programme

Agreed: The Committee agreed the Forward Work Programme as drafted.

The Committee also discussed the remaining time available to conclude its scrutiny of the Education Bill.

Agreed: The Committee agreed that Members should forward details to Committee staff of their availability for a possible 'Away Day' to progress the scrutiny of the Bill.

[EXTRACT]

Tuesday 05 March 2013 and Wednesday 06 March 2013 Room 30 and The Senate Chamber

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Michaela Boyle MLA
Jonathan Craig MLA
Jo-Anne Dobson MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Pat Sheehan MLA
Brenda Hale MLA

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)
Damien Martin (Clerk Assistant) Item 5 only

Apologies: Sean Rogers MLA

9:48am The meeting commenced in public session.

3. **Matters Arising**

3.2. The Committee noted correspondence from the Department on the modification of employment law and Clause 13 of the Education Bill.

4. **Education Bill - Informal Clause-by-clause scrutiny**

9:54am Departmental Officials joined the meeting

Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were in attendance to provide further information on the Education Bill as required.

The Committee continued its informal Clause by Clause scrutiny of the Education Bill.

Clause 11: ESA to employ peripatetic teachers

Agreed: The Committee agreed to write to the Department to request information on the availability of Irish medium teachers and the need for peripatetic teachers in this sector.

Agreed: The Committee agreed informally that it would not support CnaG's amendment relating to peripatetic teachers in the IME sector.

Agreed: The Committee agreed that it would reserve its position on this clause and all proposed amendments until the formal clause by clause scrutiny of the Bill.

Clause 12: Salaries etc. of staff: administrative and financial arrangements

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 13: Modification of employment law

Agreed: The Committee agreed to park its consideration of this clause pending a response from the Department on modifications to the Education (Modification of Statutory Provisions Relating to Employment) Order.

Clause 14: ESA to provide or secure provision of training and advisory support services for schools

Agreed: The Committee agreed to write to the Department in order to request a background paper setting out Departmental policy on the provision of training and support for schools including commentary on the proposal that a proportion of ESA's training and development budget should be made available directly to schools.

Agreed: The Committee also agreed to request an update on the report of the Shared Education Advisory Group and the likely timetable for the development of a Shared Education policy.

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 15: ESA to provide library services to grant-aided schools and other educational establishments

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 16: ESA to secure provision of educational and youth services and facilities

10:54am Michaela Boyle left the meeting

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 17: ESA to pay capital grants to voluntary and grant-maintained integrated schools.

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 18: Establishment of controlled schools

10:57am Michaela Boyle rejoined the meeting.

Agreed: The Committee informally agreed that it would support a TRC amendment which would require consultation with the relevant sectoral body prior to the establishment of a new controlled school.

Agreed: The Committee also agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 19: Responsibilities of ESA in relation to controlled schools

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 20: ESA to contract for certain works

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 21: ESA to pay superannuation benefits of teachers

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 22: Ancillary powers of ESA

Agreed: The Committee agreed to request a written briefing from the Department on the implications for schools of registration with the Charities Commission.

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

11:29am The Chairperson joined the meeting and assumed the Chair.

Clause 23: Power of ESA to undertake commercial activities

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 24: Area education plans

Agreed: The Committee agreed to seek confirmation from the Department of the legislative competence of the proposal that, for Area Education Plans, ESA or the Department should be required to consult on a cross-border basis.

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 25: Preparation and revision of plans

11:49am Chris Hazzard left the meeting

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 26: Revocation of plans

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 27: Publicity and consultation

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 28: Involvement of relevant interests

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 29: Guidance

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 30: Regulations

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 31: Dissolution of certain statutory bodies

12:14pm Jo-Anne Dobson joined the meeting

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 32: Transfer of assets, liabilities and staff

Agreed: The Committee agreed that it would reserve its position on this clause until the receipt of further details requested from the Department on these transfers.

12:20pm The Chairperson suspended at the meeting.

9:35am The meeting resumed in private session on Wednesday, 6 March 2013, in the Senate Chamber. The following Members were in attendance: Mervyn Storey, Danny Kinahan, Jonathan Craig, Chris Hazzard, Trevor Lunn and Pat Sheehan.

5. Procedural Advice – Further extension to the Committee Stage

The Committee received a briefing from an Assembly Clerk Assistant on the procedures for seeking a further extension to the Committee Stage of the Education Bill.

The briefing was followed by a question and answer session.

9:37am Brenda Hale joined the meeting,

9:38am Jo-Anne Dobson joined the meeting.

9.40am Michelle McIlveen joined the meeting.

Agreed: The Committee agreed that it was content to carry out its formal clause by clause scrutiny of the Education Bill on 19th and 20th March 2013.

10:04am Brenda Hale left the meeting.

10:06am Pat Sheehan left the meeting.

Danny Kinahan proposed that the Committee should continue with its present scrutiny of the Education Bill, while also pursuing the possibility of obtaining an extension to the Committee Stage.

The Committee divided on the proposal:

Ayes	Noes	Abstentions
Danny Kinahan	Mervyn Storey	None
Jo-Anne Dobson	Jonathan Craig	
	Chris Hazzard	
	Michelle McIlveen	

The proposal was not supported.

10:10am Michaela Boyle joined the meeting.

6. Forward Work Programme

The Committee discussed how best to use the remaining time available to conclude the Committee Stage of the Education Bill.

Agreed: The Committee agreed to reschedule the planned Departmental briefing on the Savings Delivery Plan until after Easter Recess.

Agreed: The Committee also agreed that an 'Away Day', as previously discussed, would not be necessary.

Agreed: The Committee agreed to the Forward Work Programme as drafted.

10:18am The meeting moved into public session.

10:28am Jo-Anne Dobson left the meeting.

9. Education Bill – Informal Clause by Clause continued

11:03am Departmental officials joined the meeting.

Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were again in attendance to provide further information on the Education Bill as required.

The Committee noted a response from CCEA outlining its current engagement with industry, commerce and the professions.

The Committee continued its informal Clause by Clause scrutiny of the Education Bill.

Clause 33: Schemes of Management

Clause 34: Preparation and approval of schemes of management

Clause 35: Reserve power of ESA to make a scheme of management

Clause 36: Revision of schemes of management

Clause 37: Procedure where ESA does not approve a submitted scheme

Agreed: As these clauses are linked to the Committee's queries in respect of the Heads of Agreement, the Committee agreed to reserve its position on these clauses.

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

Agreed: The Committee informally agreed that it would not support any of the proposed amendments.

Agreed: The Committee informally agreed that it was content with this clause as drafted.

11:21am Michaela Boyle left the meeting.

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

11:27am Pat Sheehan rejoined the meeting.

Agreed: The Committee agreed to write to the Department of Education for clarification of the role of the Public Appointments Commissioner in appointing Boards of Governors.

11:31am Michaela Boyle rejoined the meeting.

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

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

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Clause 41: Management of controlled schools

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 42: Management of maintained nursery schools

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Clause 43: Controlled Schools: definition

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Part 3: Inspections**Clause 44 Inspection on behalf of the Department****Clause 45 Powers of Inspectors****Clause 46 Reports and action plans****Clause 47 Inspections on behalf of DEL****Clause 48 Assessors and lay persons**

Agreed: The Committee agreed to defer further consideration of Clauses 44-48 until further information was obtained on the Education and Training Inspectorate.

Part 4 Functions of the Northern Ireland Council for the Curriculum, Examinations and Assessment**Clause 49: Interpretation of this part**

12:02am Chris Hazzard left the meeting.

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Clause 50: Functions of the Council in relation to the designated examinations and the statutory assessments

12:06am Chris Hazzard rejoined the meeting.

Clause 51: Functions of the Council in relation to accreditation of the designated qualifications**Clause 52: Other functions of the Council****Clause 53: Ancillary functions of the Council****Clause 54: Discharge by the Council of its functions**

Agreed: The Committee agreed to reserve its position on Clauses 50 to 54 pending a paper from the Department on the role of the Council for Curriculum, Examinations and Assessments.

Part 5 Protection of children and young people**Clause 55: Safeguarding and promoting welfare of children and young people**

Agreed: The Committee agreed to write to the Department asking about the legal relationship between ESA and the Safeguarding Board.

12:20pm Michaela Boyle left the meeting.

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Clause 56: Duty on providers of funded pre-school education to safeguard and promote welfare of children

12:22pm Chris Hazzard left the meeting.

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Clause 57: Duty of providers of educational and youth services to safeguard and promote welfare of children

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Clause 58: Directions as to exercise of child protection duties by Board of Governors

The Committee noted the Department's assertion that Part 5 (Protection of children and young persons) is the only part of the Education Bill which gives ESA the power to direct a Board of Governors without the authority of the Department of Education.

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Clause 59: Duty of co-operation concerning welfare and protection of children and young persons

Agreed: The Committee informally agreed that it was content with this clause as drafted.

Part 6 Miscellaneous and supplementary

Clause 60: General duty of the Department and DEL

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 61: Grants for educational and youth services, etc.

Agreed: The Committee informally agreed that it would not support any of the proposed amendments.

Agreed: The Committee informally agreed that it was content with the clause as drafted.

12:38pm Jo-Anne Dobson rejoined the meeting.

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

12:40pm Chris Hazzard rejoined the meeting.

Agreed: The Committee agreed to defer its consideration of this clause pending forthcoming amendments from the Department.

12:42pm Pat Sheehan left the meeting.

Clause 63: Sectoral Bodies

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 64: Supplementary, incidental, consequential, transitional provision etc.

12:49pm Jo-Anne Dobson left the meeting.

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 65: Regulations and orders

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 66: Interpretation

Agreed: The Committee agreed that it would reserve its position on this clause until the formal clause by clause scrutiny of the Bill.

Clause 67: Minor and consequential amendments and repeals and revocations

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 68: Commencement

Agreed: The Committee informally agreed that it was content with the clause as drafted.

Clause 69: Short title

The Committee noted that the short title would have to be amended to read “Education Act (Northern Ireland) 2013”

Agreed: The Committee informally agreed that it was content with the short title as amended.

Agreed: The Committee agreed to write to DE, DEL and OFMDFM in advance of its formal clause by clause scrutiny of the Education Bill seeking clarification on the Heads of Agreement question and requesting that any proposed amendments to the Bill should be made available to the Committee.

12:55pm Departmental officials left the meeting.

[EXTRACT]

Tuesday 12 March 2013 and Wednesday 13 March 2013 Room 30 and Room 21

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

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)
Ursula Savage (Bursary Student)
Ellis Haughey (Bill Clerk) – Item 5 only.

Apologies: None

9.32am The meeting commenced in public session.

3. **Matters Arising**

The following matters were considered:

- 3.1. The Committee noted correspondence from Phoenix Integrated Primary School and from the Northern Ireland Council for Integrated Education on the Education Bill.
- 3.2. The Committee noted correspondence from the Education and Training Inspectorate offering to brief the Committee on the Education Bill.

Agreed: The Committee agreed that it would be unable to facilitate any further briefings at this point in its scrutiny of the Bill.

9.34am Michelle McIlveen joined the meeting.

- 3.1. The Committee also noted a further response from the Department on the role of the Commissioner for Public Appointments on the appointment of school governors; and on the anticipated relationship between ESA and the Safeguarding Board for Northern Ireland.

9.35am Pat Sheehan joined the meeting.

4. **Education Bill - Informal Clause-by-clause scrutiny**

Departmental Officials joined the meeting at 9:36am

Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were in attendance to provide further information on the Education Bill as required.

The Committee continued its informal Clause by Clause scrutiny of the Education Bill.

9.36am Danny Kinahan joined the meeting.

Clause 2: Functions and general duty of ESA

Agreed: The Committee agreed that it would reserve its position on this clause and all proposed amendments until the formal clause by clause scrutiny of the Bill.

Schedule 1: The Education and Skills Authority

9.51am Jo-Anne Dobson joined the meeting.

Agreed: The Committee agreed that it would reserve its position on this schedule until the formal clause by clause scrutiny of the Bill.

Schedule 2: Provisions required in employment schemes

9.56am Jonathan Craig left the meeting.

9.59am Danny Kinahan left the meeting.

The Committee noted that no response had been received from the Minister for Education, or from the Office of the First Minister and deputy First Minister, on possible amendments to resolve anomalies in the Bill relating to the Heads of Agreement.

Agreed: The Committee agreed that it would reserve its position on this schedule until the formal clause by clause scrutiny of the Bill.

10:00am The Chairperson suspended at the meeting to enable Members to take part in Plenary business.

11:23am The meeting resumed. The following Members were in attendance: Mervyn Storey, Jonathan Craig, Jo-Anne Dobson, Chris Hazzard and Trevor Lunn.

Schedule 3: Transfer to ESA of staff employed by Boards of Governors

Agreed: The Committee agreed that it would reserve its position on this schedule until the formal clause by clause scrutiny of the Bill.

Schedule 4: Transfer of assets, liabilities and staff of dissolved bodies

The Committee noted that the list of assets, liabilities and staff posts to be transferred to ESA was still being prepared by the Department, and would not be available before the end of the Committee Stage of the Bill.

Agreed: The Committee agreed that it would reserve its position on this schedule until the formal clause by clause scrutiny of the Bill.

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

11:39am Michelle McIlveen rejoined the meeting.

Agreed: The Committee agreed that it would reserve its position on this schedule until the formal clause by clause scrutiny of the Bill.

Schedule 6: Transfer of certain staff of the Department

The Committee noted a Ministerial assurance that any transfers of staff from CnaG and NICIE to ESA would be on the same terms and conditions as those transferring from statutory bodies, although it was not yet clear whether any such transfers would be necessary.

Agreed: The Committee agreed that it was informally content with the schedule as drafted.

Schedule 7: Minor and consequential amendments

The Committee noted the Department's intention to bring forward amendments to define 'Catholic school' and 'Irish-speaking school'.

11:48am Brenda Hale rejoined the meeting.

Agreed: The Committee agreed that it would reserve its position on this schedule until the formal clause by clause scrutiny of the Bill.

Schedule 8: Repeals

11:56am Danny Kinahan rejoined the meeting.

Agreed: The Committee agreed that it was informally content with the Schedule as drafted.

Miscellaneous issues

The Committee considered a number of amendments suggested by stakeholders who responded to its call for evidence.

Agreed: The Committee agreed to support an amendment to facilitate the nomination of controlled post-primary governors from amongst the transferor nominating authorities, rather than solely from the governors of the particular contributory primary schools.

No other proposed amendments were agreed by the Committee.

12:09pm Departmental officials left the meeting.

Agreed: The Committee agreed that it did not require any further formal Departmental briefings, but that it was content to consider evidence and responses already received.

12:10pm The Chairperson suspended the meeting.

10:04am The meeting resumed in private session on Wednesday 13 March 2013 in Room 21.

The following members were in attendance: Mervyn Storey, Michaela Boyle, Jonathan Craig, Jo-Anne Dobson, Chris Hazzard, Michelle McIlveen, Sean Rogers and Pat Sheehan.

5. Briefing from the Assembly Bill Office

An official from the Assembly Bill Office briefed the Committee on the formal clause by clause scrutiny of the Education Bill.

The briefing was followed by a question and answer session.

10:12am The meeting moved into public session.

10:17am Danny Kinahan joined the meeting.

8. Education Bill

As previously agreed at agenda item 4, the Committee did not receive a Departmental briefing on the Education Bill.

The Chairperson expressed the Committee's gratitude to Departmental officials who had provided oral evidence to the Committee on a considerable number of occasions.

Members noted that the Department had not responded to a request for information on:

- the dedicated governor support service to be provided to ESA; an updated Business Plan for ESA;
- the completed EQIA, or the original screening document, for the Education Bill;
- the policy position in respect of the provision of training and support to schools;
- and the availability of Irish medium teachers.

Agreed: The Committee noted CCEA's response in relation to its work with commerce, industry and the professions, and agreed to pursue this issue further during a planned visit to CCEA after Easter.

11:28am Danny Kinahan left the meeting.

11:31am Pat Sheehan left the meeting.

9. Forward Work Programme

The Committee considered its draft Forward Work Programme.

The Committee noted that its formal Clause by Clause scrutiny of the Education Bill would be carried out at its meetings on 19 and 20 March 2013.

Agreed: The Committee agreed that it would meet during Easter Recess, on 4 April 2013, to review and agree its report on the Bill.

Agreed: The Committee agreed that it was content to receive only an electronic copy of the Bill Report on 29 March 2013, and that hard copies of the report would be tabled at its meeting on 4 April 2013.

[EXTRACT]

Tuesday 19 March 2013 and Wednesday 20 March 2013 Room 30 and Room 144

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Michaela Boyle MLA
Jonathan Craig MLA
Jo-Anne Dobson MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)

Apologies: None

9.34am The meeting commenced in public session.

3. **Matters Arising**

The following matters were considered:

- 3.1. The Committee noted correspondence between the Department and the Northern Ireland Council for Integrated Education on the Education Bill.
- 3.2. The Committee noted correspondence from the Minister for Employment and Learning on amendments to Clauses 47 and 48 of the Education Bill.
- 3.3. The Committee noted correspondence from the Irish National Teachers' Organisation (INTO) to the Minister for Employment and Learning regarding Clause 13 of the Education Bill.
- 3.4. The Committee noted a response from the Department on the availability of Irish-medium peripatetic teachers.

4. **Education Bill - Formal Clause-by-clause scrutiny**

A Departmental official joined the meeting at 9:35am

Chris Stewart, Director of the Equality and All-Ireland Directorate, was in attendance to provide further information on the Education Bill as required.

The Committee commenced its formal Clause by Clause scrutiny of the Education Bill.

9.36am Trevor Lunn joined the meeting.

Clause 1: The Education and Skills Authority

Agreed: The Committee agreed that, subject to consequential amendment, it was content with Clause 1 as drafted.

Clause 2: Functions and general duty of ESA

9.45am Danny Kinahan joined the meeting.

9.45am The meeting moved into private session.

The Committee discussed the procedures for the continuation of its formal scrutiny and the wording of potential amendments.

The meeting moved back into public session at 9:50am

9.54am Michelle McIlveen left the meeting.

Agreed: The Committee agreed that it would reserve its position on this clause.

Agreed: The Committee agreed to give further consideration to a recommendation in its Bill Report in respect of Shared Education and a related Ministerial assurance.

Clause 3: ESA to employ all staff of grant-aided schools**Clause 4: Employment schemes for grant-aided schools****Clause 5: Preparation and approval of employment schemes****Clause 6: Reserve power of ESA to make employment scheme****Clause 7: Revision of employment schemes****Clause 8: Procedure where ESA does not approve a submitted scheme****Clause 9: Effect of employment scheme****Clause 10: Transfer to ESA of staff employed by Boards of Governors****Clause 11: ESA to employ peripatetic teachers****Clause 12: Salaries etc. of staff: administrative and financial arrangements****Clause 13: Modification of employment law**

Agreed: The Committee agreed to reserve its position on Clauses 3 to 13 as no clarification has been received on the employment and Heads of Agreement issues that relate to this section of the Bill.

Clause 14: ESA to provide or secure the provision of training and advisory support and services for schools

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 14 as drafted.

Clause 15: ESA to provide library services to grant-aided schools and other educational establishments

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 15 as drafted.

Clause 16: ESA to secure provision of educational and youth services and facilities

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 16 as drafted.

Clause 17: ESA to pay capital grants to voluntary and grant-maintained integrated schools

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 17 as drafted.

Clause 18: Establishment of controlled schools

10:27am Pat Sheehan joined the meeting.

10:31am Pat Sheehan left the meeting.

Agreed: The Committee agreed the following amendment:

Clause 18, page 11, line 5: Add “may in consultation with the relevant sectoral bodies”

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 18 as amended.

Clause 19: Responsibilities of ESA in relation to controlled schools

Agreed: The Committee agreed to reserve its position on Clauses 19 until clarification was received on the employment and Heads of Agreement issues that relate to this clause.

Clause 20: ESA to contract for certain works

10:56am Michelle McIlveen rejoined the meeting.

Agreed: The Committee agreed that it was content with Clause 20 as drafted, subject to consequential amendment, and subject also to an assurance from the Minister that ESA would have no power to enter into contracts relating to the provision or alteration of premises without the consent of the owner of those premises.

Clause 21: ESA to pay superannuation benefits of teachers

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 21 as drafted.

Clause 22: Ancillary powers of ESA

The Committee expressed concerns regarding the nature and scope of powers conferred on ESA by this clause. The Committee believed that these powers should be more clearly defined and that any extension of them should be subject to the scrutiny of the Assembly.

Clause 23: Power of ESA to undertake commercial activities

11:16am Sean Rogers left the meeting.

11:17am Michaela Boyle joined the meeting.

The Committee expressed similar concerns regarding the wide-ranging nature of the powers conferred on ESA by this Clause.

11:22am Sean Rogers rejoined the meeting.

11:23am Pat Sheehan rejoined the meeting.

11:24am The Chairperson suspended the meeting.

9.53am The meeting resumed in public session on Wednesday 20 March 2013 in Room 144.

The following members were in attendance: Mervyn Storey, Danny Kinahan, Jonathan Craig, Chris Hazzard, Trevor Lunn, Michelle McIlveen and Sean Rogers.

7. Education Bill - Formal Clause-by-clause scrutiny

10:03am Departmental officials joined the meeting.

Chris Stewart, Director of the Equality and All-Ireland Directorate, and Peter Burns, Central Support and Co-ordination Branch, were in attendance to provide further information on the Education Bill as required.

The Chairperson noted correspondence from the Department indicating the scope of the amendments proposed by the Minister of Education. The Chairperson also noted a late submission from the Northern Ireland Teachers' Council.

The Committee considered a draft recommendation on Shared Education to be included in its Bill Report. This recommendation related to concerns expressed by Members initially in respect of Clause 2, but also reiterated at other points in their clause by clause scrutiny.

Agreed: The Committee agreed that the recommendation should be amended to read:

“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 education to the betterment of the educational experience for pupils.”

The Committee continued its formal clause by clause scrutiny.

Clause 22: Ancillary powers of ESA

The Committee agreed to return to its scrutiny of Clause 22.

Agreed: The Committee agreed the following amendment:

Clause 22, page 12, line 19: Leave out from the start of line 19 to “particular” in line 22 and insert - ‘For the purposes of discharging its functions,’

Clause 22, page 12, line 29: At end insert - () The Department may by order amend subsection (1).

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 22 as amended.

Clause 23: Power of ESA to undertake commercial activities

The Committee agreed to return to its scrutiny of Clause 23.

Agreed: The Committee agreed the following amendment:

Clause 23, page 12: Leave out lines 41 and 42

Clause 23, page 13, line 27: At end insert - ‘(9) The Department may by order amend the powers granted to ESA under this section.’

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 23 as amended.

Clauses 24 to 30: Area Planning:**Clause 24: Area Education Plans****Clause 25: Preparation and revision of plans****Clause 26: Revocation of plans**

Clause 27: Publicity and consultation

Clause 28: Involvement of relevant interests

Clause 29: Guidance

Clause 30: Regulations

Some Members expressed the view that the clauses relating to Area Planning should require ESA to take cognisance of cross-border provision particularly when considering the viability of small rural schools.

It was proposed that the Committee should include a formal recommendation in its report to reflect these concerns.

The Committee divided on the proposal:

Ayes

Chris Hazzard
Trevor Lunn
Sean Rogers

Noes

Mervyn Storey
Danny Kinahan
Jonathan Craig
Jo-Anne Dobson
Michelle McIlveen

The proposal was not agreed.

The Committee discussed the provisions of Clause 28(4) whereby, in preparing or revising an Area Plan, ESA does not have a duty to consult with relevant stakeholders as specified at 28(5).

Agreed: The Committee agreed to include a recommendation in its report that ESA should have a duty to consult with key stakeholders.

Agreed: The Committee also agreed to include a recommendation in its report that would require ESA to rural-proof Area Plans and give proper consideration to the impact on communities of the closure of rural schools.

Agreed: The Committee additionally agreed to amend the Bill to require guidance issued by the Department to ESA in respect of Area Plans to be subject to affirmative rather than negative resolution.

10:53am Jo-Anne Dobson left the meeting.

Agreed: The Committee agreed to reserve its position on Clauses 24-30.

10:55am Michaela Boyle joined the meeting.

Clause 31: Dissolution of certain statutory bodies

Agreed: The Committee agreed to reserve its position on Clause 31 as no clarification has been received on the employment and Heads of Agreement issues that relate to this clause.

Clause 32: Transfer of assets, liabilities and staff

Agreed: The Committee agreed to reserve its position on Clause 32 as the Department has been unable to provide detailed information on the assets, liabilities and staff to be transferred and as no clarification has been received on the employment and Heads of Agreement issues that relate to this clause.

Clauses 33 to 37:**Clause 33: Schemes of Management****Clause 34: Preparation and approval of schemes of management****Clause 35: Reserve power of ESA to make schemes of management****Clause 36: Revision of schemes of management****Clause 37: Procedure where ESA does not approve a submitted scheme**

Agreed: The Committee agreed that it was content in principle with the possible amendments proposed by the Minister in relation to Schemes of Management relating to consultation and publication of schemes.

Some Members indicated that they believed that Irish-speaking schools should not be specifically identified in Clause 33(5) and 33(6), but rather that these provisions should apply equally to all schools. Other Members felt that the clause should be amended to include faith-based and integrated schools.

Agreed: The Committee agreed to reserve its position on Clauses 33 - 37.

Clause 38: Duties of Boards of Governors in relation to achievement of high standards of educational attainment

Agreed: The Committee agreed to recommend that the Minister should give consideration to widening the interpretation of attainment beyond solely academic measures.

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 38 as drafted.

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

Agreed: The Committee agreed to reserve its position on Clause 39.

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

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 40 as drafted

Clause 41: Management of controlled schools

Some Members expressed concerns regarding the change in the composition of Boards of Governors resulting from the merger of controlled grammar with controlled non-grammar post-primary schools.

Agreed: The Committee agreed to reserve its position on Clause 41.

Clause 42: Management of maintained nursery schools

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 42 as drafted.

Clause 43: Controlled schools: definition

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 43 as drafted.

Clauses 44-48: Inspections:

Clause 44: Inspections on behalf of the Department

Clause 45: Powers of inspectors

Clause 46: Reports and action plans

Clause 47: Inspections on behalf of DEL

Clause 48: Assessors and lay persons

The Committee expressed concerns regarding the lack of independence and accountability of the Education and Training Inspectorate.

Agreed: The Committee agreed to recommend that consideration should be given to establishing an Inspectorate which operates independently from the Department. The Committee also recommended that a formal appeals mechanism and complaints procedure should be put in place.

Agreed: The Committee also agreed to support in principle the DEL Minister's amendments relating to inspections for private providers of further and higher educational services.

Agreed: The Committee agreed to reserve its position on Clauses 44 – 48.

12:01pm The Chairperson suspended the meeting for lunch.

12:21pm Jonathan Craig left the meeting.

12:21pm The meeting resumed in public session.

Clauses 49-54: Functions of CCEA

Clause 49: Interpretation of this Part

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 49 as drafted.

Clause 50: Functions of the Council in relation to the designated examinations and the statutory assessments

Clause 51: Functions of the Council in relation to the accreditation of the designated qualifications

Clause 52: Other powers of the Council

Clause 53: Ancillary functions of the Council

Clause 54: Discharge by the Council of its functions

Some Members expressed concerns regarding a possible conflict of interest in the role of CCEA as both Regulator and Examining Body.

Agreed: The Committee agreed to reserve its position on Clauses 50-54.

Clauses 55 - 59: Protection of Children and Young Persons:

Clause 55: Safeguarding and promoting welfare of children and young people

Clause 56: Duty on providers of funded pre-school education to safeguard and promote

welfare of children**Clause 57: Duty of providers of educational and youth services to safeguard and promote welfare of children****Clause 58: Directions as to exercise of child protection duties by Board of Governors****Clause 59: Duty of co-operation concerning welfare and protection of children and young persons**

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clauses 55 – 59 as drafted.

Clause 60: General duty of the Department and DEL

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 60 as drafted.

Clause 61: Grants for educational and youth services, etc.

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 61 as drafted.

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

Agreed: The Committee agreed to reserve its position on Clause 62, but agreed that it supported in principle the Minister's proposal to transfer the governance of the Tribunal to the Office of the First Minister and deputy First Minister.

Clause 63: Sectoral bodies

The Committee noted that the Minister may bring forward amendments defining 'Irish-speaking school' and 'Catholic school'.

Agreed: The Committee agreed to reserve its position on Clause 63.

Clause 64: Supplementary, incidental, consequential, transitional provisions etc.

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 64 as drafted.

Clause 65: Regulations and orders

Agreed: The Committee agreed a consequential amendment to the clause which will require regulations associated with Clauses 22, 23 and 30 to be subject to affirmative resolution.

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 65 as amended.

Clause 66: Interpretation

12:42pm Jo-Anne Dobson rejoined the meeting.

The Committee noted amendments relating to the Heads of Agreement.

Trevor Lunn proposed that Clause 66 should be simply agreed as drafted.

The Committee divided on the proposal:

Ayes

Michaela Boyle
Chris Hazzard
Trevor Lunn

Noes

Danny Kinahan
Jo-Anne Dobson
Sean Rogers

Mervyn Storey and Michelle McIlveen did not vote.

The proposal was not agreed.

Agreed: The Committee agreed that it was content, subject to consequential amendment and on a without prejudice basis, with Clause 66 as drafted.

Clause 67: Minor and consequential amendments and repeals and revocations

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 67 as drafted.

Clause 68: Commencement

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 68 as drafted.

Clause 69: Short title

Agreed: The Committee agreed that it was content in principle with the Department's proposed amendment to refer to the Education Act 2013 rather than 2012.

Agreed: The Committee agreed that it was content, subject to consequential amendment, with Clause 69 as amended.

12:50pm Michaela Boyle left the meeting.

Schedule 1: The Education and Skills Authority

The Committee expressed concerns regarding the proposed composition of the membership of the Board of the Education and Skills Authority.

Agreed: The Committee agreed to reserve its position on Schedule 1.

Schedule 2: Provisions required in employment schemes

Agreed: The Committee agreed to reserve its position on Schedule 2 as no clarification has been received on the employment and Heads of Agreement issues which relate to this Schedule.

Schedule 3: Transfer to ESA of staff employed by Boards of Governors

Agreed: The Committee agreed to reserve its position on Schedule 3 as no clarification has been received on the employment and Heads of Agreement issues which relate to this Schedule.

Schedule 4: Transfer of assets, liabilities and staff of dissolved bodies

Agreed: The Committee agreed to reserve its position on Schedule 4 as the Department has been unable to provide detailed information on the assets, liabilities and staff to be transferred and as no clarification has been received on the employment and Heads of Agreement issues which relate to this Schedule.

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

Agreed: The Committee agreed to reserve its position on Schedule 5 as the Department has been unable to provide detailed information on the assets and liabilities to be transferred and as no clarification has been received on the employment and Heads of Agreement issues which relate to this Schedule.

Schedule 6: Transfer of certain staff of the Department

Agreed: The Committee agreed that it was content, subject to consequential amendments, with Schedule 6 as drafted.

Schedule 7: Minor and consequential amendments

Some Members expressed concerns that ESA may not approve a Development Proposal for the transformation of a Controlled school into a Controlled Integrated school if this was contrary to Area Planning considerations.

Agreed: The Committee agreed to reserve its position in respect of the Minister's proposed amendment to Schedule 7 which would require any person or body bringing forward a Development Proposal to first consult the relevant sectoral body or bodies.

Agreed: The Committee agreed that it was content in principle with the Minister's proposed amendment to remove the requirement for Transferor governors of Controlled secondary schools to also be governors of feeder Controlled primary schools.

Agreed: The Committee agreed that it was content in principle with the Department's proposed amendment to address a minor error in relation to Article 49 of the Education and Libraries (Northern Ireland) Order 1986.

Agreed: The Committee agreed to reserve its position on Schedule 7.

Schedule 8: Repeals

Agreed: The Committee agreed that it was content, subject to consequential amendments, with Schedule 8 as drafted.

Miscellaneous Amendments

Some Members expressed support for the following proposed amendments from stakeholders:

- (a) That the Bill should be amended to increase autonomy for all schools;
- (b) That the Bill should be amended to strengthen consultative practices in respect of school closures, and that there should be a presumption against the closure of rural schools;
- (c) That the Bill should be amended to provide for Irish medium schools to have their own legal status; and
- (d) That the Bill should be amended to allow for special schools to be designated as integrated schools.

Some Members indicated that they supported in principle suggestions that parents should be permitted some flexibility in respect of the starting age for compulsory education and the use in certain circumstances of a suitable pre-school setting as an alternative to primary school. Members also indicated that they believed that the Education Bill was an inappropriate vehicle to bring forward legislative changes in this regard.

Long Title

Agreed: The Committee agreed the Long Title of the Bill.

[EXTRACT]

Thursday 4 April 2013

Room 29

Present: Mervyn Storey MLA (Chairperson)
Danny Kinahan MLA (Deputy Chairperson)
Michaela Boyle MLA
Jo-Anne Dobson MLA
Chris Hazzard MLA
Trevor Lunn MLA
Michelle McIlveen MLA
Sean Rogers MLA
Pat Sheehan MLA

In Attendance: Peter McCallion (Assembly Clerk)
Sheila Mawhinney (Assistant Assembly Clerk)
Sharon McGurk (Clerical Supervisor)
Sharon Young (Clerical Officer)

Apologies: Jonathan Craig MLA

The meeting commenced in private session at 10.33 am.

1. Apologies

Apologies are detailed above.

2. Draft minutes of 19 and 20 March 2013

Agreed: The draft minutes of the meeting held on 19 and 20 March 2013 were agreed by the Committee.

3. Matters Arising

The Committee noted the following papers in relation to the Education Bill:

- 3.1. A response from the Department setting out the role and functions of CCEA.
- 3.2. A response from the Committee for the Office of the First Minister and deputy First Minister, indicating that it would relay its views on the Education Bill following a joint briefing from OFMDFM and the Department of Education.
- 3.3. A written submission from the Ulster Centre on Multilingualism at the School of Communication, University of Ulster, on the Education Bill.

Agreed: The Committee agreed that these items of correspondence should not be included in its Report on the Education Bill as they were received after the conclusion of its formal clause by clause scrutiny.

4. Education Bill – Consideration of Committee report

The Committee considered a draft report on its scrutiny of the Education Bill.

Executive Summary

Agreed: The Committee agreed that the Report should be amended to indicate that the recommendations relating to Inspections were supported by a majority of Members and not all Members.

Agreed: The Committee agreed that it was content with the Executive Summary as amended.

Agreed: The Committee agreed that the issue of electronic interference impacting on Hansard transcripts should be raised at the next meeting of the Chairpersons' Liaison Group.

Section 1: Introduction

Agreed: The Committee agreed that the exact number of organisations which had responded to its request for written evidence should be specified in the Report.

Agreed: The Committee agreed that it was content with Section 1: Introduction, as amended.

Section 2: Consideration of the Bill

Agreed: The Committee agreed that the wording of its consideration of Clause 13 should be amended to remove a reference to Assembly Legal Services.

Agreed: The Committee that, at Clause 41, the reference to the "Catholic Teaching Certificate" should be replaced by the "Certificate in Religious Education".

Agreed: As above, the Committee agreed that the Report should be amended to indicate that the recommendations relating to Inspections were supported by a majority of Members and not all Members.

Agreed: The Committee agreed that to amend the wording relating to the proposed designation of Special schools as Integrated schools.

Agreed: The Committee agreed that the Report should reflect that some Members supported in principle a flexible starting age for compulsory school education.

Agreed: The Committee also agreed that it had noted a submission relating to arrangements for voluntary grammar schools and that the Report should be amended accordingly.

Agreed: The Committee agreed that a number of minor typographical amendments should be made.

Agreed: The Committee agreed that it was content with Section 2: Consideration of the Bill, as amended.

Agreed: The Committee agreed to write to the Department for a specific date for the publication of the report of the Shared Education Advisory Group.

Section 3: Decisions on Clause by Clause Scrutiny of the Bill

Agreed: The Committee agreed that a small number of minor typographical amendments should be made.

Agreed: The Committee agreed that it was content with Section 3: Decisions on Clause by Clause Scrutiny of the Bill, as amended.

Appendices 1-6

Agreed: The Committee agreed that it was content with Appendices 1-6 as indicated in the draft Report.

Agreed: The Committee agreed that it was content that the Report as amended be the Second Report of the Education Committee to the Assembly for the current mandate.

Agreed: The Committee agreed that it was content to order that the amended report be printed on 8 April 2013.

Agreed: The Committee agreed that it was content for an extract from the minutes of the meeting to be included unapproved in the appendix to the report.

5. Date, time and place of next meeting

The next meeting will be held on Tuesday 9 April 2013 at 3.00pm in Room 29, Parliament Buildings.

11.09 am The Chairperson adjourned the meeting.

Mervyn Storey

Chairperson, Committee for Education

10 April 2013



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

Appendix 2 – Minutes of Evidence

10 October 2012	Departmental Briefing on Education Bill Assembly Research Briefing on Education Bill
14 November 2012	Motion to Extend the Committee Stage
21 November 2012	Departmental Briefing on Education Bill
28 November 2012	NITC Evidence NAHT Evidence ASCL Evidence Session Departmental response to Stakeholder Evidence
5 December 2012	Transferors' Representative Council Evidence NICIE and IEF Evidence Comhairle na Gaelscolaíochta Evidence
12 December 2012	GBA Evidence NICCE/CCMS Evidence
9 January 2013	NICCE/CCMS Evidence WELB Evidence Departmental response to Stakeholder Evidence
16 January 2013	CHA Evidence Departmental response to Stakeholder Evidence
23 January 2013	ACGS Evidence NIVGSBA Evidence
30 January 2103	Informal Clause by Clause Scrutiny
6 February 2013	NIYF Evidence Informal Clause by Clause Scrutiny
27 February 2013	Informal Clause by Clause Scrutiny
5/6 March 2013	Informal Clause by Clause Scrutiny
12/13 March 2013	Informal Clause by Clause Scrutiny
19/20 March 2013	Formal Clause by Clause Scrutiny

10 October 2012

Members present for all or part of the proceedings:

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

Witnesses:

Mr Chris Stewart *Department of Education*

1. **The Chairperson:** We now move to the person who I have no doubt will be able to give us all the answers. Not that we would ever put Chris under pressure. Chris, you are very welcome. We go back a fair length of time. We have been here before, and there is a sense of déjà vu. I hope that members brought a copy of the Bill with them. We will get to know its pages, clauses and schedules reasonably well over the next months. Thank you for your paper, Chris; please make your presentation.
2. **Mr Chris Stewart (Department of Education):** Thank you, Chairman. Good morning members; it is nice to be back. I think that it has been some three years since I have been with you regularly, so it is nice to have the opportunity again. Chairman, would it be helpful for me to give a quick answer to Trevor's question while it is in his head and mine?
3. **The Chairperson:** Yes.
4. **Mr Stewart:** In this case, yes:
"The Lord giveth and the Lord taketh away",
5. However, only with the approval of the Assembly. The power to change schedule 2 by order is subject to the affirmative resolution procedure, so it would require a vote of the Assembly for the Department to change that requirement.
6. **The Chairperson:** If I am right, Chris, that is what was agreed when we discussed the previous Bill in relation to these things. I remember the debate about negative resolution and —
7. **Mr Stewart:** Yes; there was a great deal of concern during the last Bill about the extent to which the Department could unilaterally change some of the rules. The Committee pressed strongly at the time for the affirmative resolution procedure to be used wherever possible. It is in the Bill that wherever there are significant powers for the Department to modify legislation, those will be subject to the affirmative resolution procedure. That is one example.
8. **Mr Lunn:** That would be regarded as a significant change or significant power?
9. **Mr Stewart:** We could not change it without the affirmative resolution of the Assembly.
10. **Mr Lunn:** How would you know? I imagine that that sort of thing crops up throughout the Bill. Who decides or what are the criteria for deciding whether it is a significant power, significant change or otherwise?
11. **Mr Stewart:** Ultimately, the Assembly would decide. The rules on that are in the Bill itself. A clause towards the end of the Bill sets out the Assembly control procedure to be used in each case. However, it would be well-established practice that wherever a Department has been given a power to amend other legislation — to avoid what is called a Henry VIII situation — it is always subject to strong Assembly control procedure.
12. **Mr Lunn:** What is the Henry the VIII analogy?

13. **The Chairperson:** You knew that you would be asked that. *[Laughter.]*
14. **Mr Lunn:** I have to ask.
15. **Mr Stewart:** Essentially, a Henry VIII situation is where you give yourself the power to change the rules as you go along.
16. **Mr Lunn:** That is chopping off heads.
17. **The Chairperson:** Which we always thought the Department had, but anyway.
18. **Mr Stewart:** There is certainly no power in the Bill for capital punishment.
19. **The Chairperson:** Yet.
20. **Mr Lunn:** I have only got to page 3; just to make it clear to me, away back in the schedules somewhere —
21. **Mr Stewart:** You have not yet come to the good bits.
22. **Mr Lunn:** — does it clarify the matter of affirmative and negative resolution and where the Assembly has a right to intervene?
23. **Mr Stewart:** Certainly, Trevor, if the concern on the part of the Governing Bodies Association is that the Department has set out rules that look superficially fair but has given itself a back door to change them, let me assure you that that is not the case. They would be subject to Assembly approval.
24. **The Chairperson:** Danny wants to come in on that point. Is the Henry VIII clause in the Bill?
25. **Mr Stewart:** Yes; the power to prevent a Henry VIII situation is in the Bill.
26. **Mr Craig:** Is it on page 37?
27. **Mr Kinahan:** That is what I wanted to ask. I have gone through the Bill and have not found the power.
28. **The Chairperson:** Henry VIII is not mentioned in the Bill.
29. **Mr Stewart:** He is not mentioned by name, but clause 65 sets out the provision.
30. **The Chairperson:** Chris, thanks for that clarification.
31. **Mr Stewart:** Chairman, forgive me. I did not intend to delve into such matters in detail quite so early.
32. With your approval, I will cover four areas stemming from the paper provided to the Committee. First, to step back a bit, I will provide a little policy context, which may help the Committee to appreciate the Minister's intentions in the Bill. I will then look at the four main functions of the Education and Skills Authority (ESA) that are provided for in the Bill. I will then give a little overview of the Bill to explain how it is constructed and where it has come from. I will then look at some of the key provisions, and I will touch on some of those that Caroline outlined in her paper.
33. **First, a bit of policy context:** as members will know, this has been a long time coming. The review of public administration began in 2002, and we have had a number of goes at this. The policy emphasis has changed; it has ebbed and flowed down the years, but the Minister is very clear that this particular proposal and this particular Bill focus on improving education rather than on reducing bureaucracy, important though that is. Although much of the focus of the Bill is on ESA as an organisation, ESA is merely a means to an end. That end, the policy goal, is better schools. We already know from the evidence what better schools look like. They have, of course, excellent teaching in the classroom; they have strong and effective leadership from their boards of governors and senior management teams; they have a strong sense of belonging to the communities that they serve; and they each have an ethos that pupils, parents, staff and governors will support. Very importantly, they have the autonomy and the support that they need to manage their day-to-day affairs. Added to that, of course, we have to have effective planning arrangements to ensure that those schools are in the right place and are sustainable.
34. The purpose of ESA, and the Bill to establish it, is to deliver that policy vision of good schools, and we invite

the Committee to judge it against that yardstick: will this Bill lead to better schools? To achieve that, the Bill sets out four main functions of ESA. First, it will plan the education estate; it will consult and involve stakeholders, but it will be the only body with a statutory education planning function. I know that members are looking forward to hearing about its second function, which is that it will be the employing authority, and its role will focus on system-wide workforce planning and development, not on interfering in schools on a day-to-day basis. Boards of governors will, if they wish, take all the employment decisions in their schools from hiring to firing, and that includes everyone from the principal to the visiting music tutor. Thirdly, ESA will promote the raising of standards, but, as a supporting critical friend to schools, not as an interfering education authority. Fourthly, it will support professional development in schools, providing or procuring support and development services itself but also supporting and enabling schools to provide those services themselves, as many schools have shown they are capable of doing. In addition to those new functions, it will, of course, take on a range of existing functions from the bodies that it will replace, including school maintenance, the school library service, school meals, transport and youth services.

35. To deliver that, we have the Bill that is before members; it has 69 clauses and eight schedules. Members will be relieved to know that it is considerably shorter than the Bill that you were looking at yesterday evening. To use a boxing analogy, it is a middleweight Bill at best, but, like every boxer, it punches above its weight. It is complex, but you will see many larger Bills. Anyone who is on the Committee for Social Development could expect to see a housing Bill typically of around 200 clauses. If you are unfortunate enough to be on the Treasury Select Committee at Westminster, you might well see a tax Bill that runs to 1,000 clauses. This one is comparatively short, but it is complex. Part of that complexity stems from

its relationship to existing education legislation, which, as you will recall, Chairman, we have rather a lot of. There are 11 existing primary orders. They are particularly important, especially the 1986, 1989 and 1998 orders, and, as we go through the Bill, we will have recourse to look at those in some detail quite frequently. Each time one of those orders came along, it amended all the previous ones, and the latest Bill will be no different. It affects, and is in turn affected by, all the previous legislation in a variety of ways. For example, it will carry out major surgery to the 1986 order and change it radically. It will make minor changes to all the other orders, and it will repeal one order completely: the Youth Service (Northern Ireland) Order 1989. It is best if members, from the outset, think of all education legislation together, almost as if it were a single Bill, because all the orders and the Bill are closely linked.

36. The Bill stems directly from the heads of agreement that were published by the First Minister and the deputy First Minister last November. It derives from previous Bills that were considered by the Committee, but it contains significant changes. Some provisions have been dropped completely; for example, those on the General Teaching Council, which will be in a separate Bill, and those on the holding body for controlled schools. Chairman, I know that you will be particularly disappointed that there are no provisions on an education advisory forum. Sadly, those do not form part of the Bill.
37. **The Chairperson:** I am gutted.
38. **Mr Stewart:** Some of the other provisions are radically different from those that you saw before; for example, those on membership and on the regulation of governance and employment arrangements in schools, which Caroline mentioned. However, some others are almost identical to the previous Bill, such as those on inspection and on area planning.
39. I will go through the key provisions fairly quickly because Caroline has

- covered some of them. The membership provisions are as set out in the heads of agreement. A chair, eight political members appointed by the d'Hondt mechanism — exactly the same as that in the Northern Ireland Act 1998, which is used to appoint Executive Ministers — four trustee members, four transferor members and four members representative of the community, who will be chosen for their particular skills and experience. If the Bill's Second Stage is agreed next week, that appointment process will begin almost straight away.
40. As I said, the provisions are very different from those in the previous Bill. However, the remainder of the provisions on ESA as an organisation, which are in schedule 1, are identical to those in the previous Bill, and those are the standard approach to establishing a non-departmental public body.
41. The provisions on employment and governance are significantly different. There are two blocks of provisions to look at there: clauses 3 to 9 on employment, and clauses 33 to 37 on management. At this point, I remind members of two central concepts and what they mean — employment schemes and schemes of management. The employment arrangements are best described — and this takes us to the nub of the difficult question that you raised earlier — as a delegated autonomy model. ESA is the employer, or the employing authority if you prefer, but employment functions are delegated to schools. Schools, not ESA, decide on the level of delegation, and they set that out in their schemes of management, along with the detailed arrangements for carrying out employment functions. Schemes of management are not delegated, but they set out the governance arrangements for each school. The role of ESA is to approve those schemes.
42. The Bill's approach is significantly different from that taken in the previous Bill. In the previous Bill, we had relatively light regulation of what schools had to do but a fairly strong potential intervention role for ESA. We now have almost the opposite. We have much more regulation of what schools must do and what they cannot do, but a significantly restricted intervention role for ESA. In fact, it is very restricted indeed. In practice, ESA must approve a scheme that meets the statutory requirements as laid out in the Bill; it has no discretion to do otherwise. ESA can modify a scheme only with the agreement of the school or with the order of the independent tribunal, and any unresolved disputes are automatically referred to the independent tribunal for decision. Therefore, ESA's role is very much circumscribed and reduced from that set out previously.
43. There are also provisions in the Bill to give the boards of governors of voluntary schools a right of referral to the tribunal. However, as acknowledged in the paper, those clauses were added to the Bill at a very late stage and, frankly, they need some work. We have considerable work to do to develop them to the point where they are ready to go forward.
44. **Mr Kinahan:** Good.
45. **Mr Stewart:** I will briefly mention two other things, one of which is the provisions on the Council for the Curriculum, Examinations and Assessment (CCEA). As referred to in the heads of agreement, the Minister considered whether CCEA should be part of ESA or remain separate. His conclusion, endorsed by the Executive, was that the priority for now is to establish ESA. CCEA will remain as a separate body, but that does not rule out some change in future. The provisions on CCEA and its functions are in the 1998 order, but they were long overdue a bit of tidying up. The Office of the Legislative Counsel's advice was that that was best done by repealing them and re-enacting them in the Bill. That is why the Bill contains CCEA provisions. Finally, sectoral bodies are mentioned in the Bill and will have an important role in representing and acting on behalf of their sectors. However, they are not statutory bodies. They are

- not established in statute, and they will not be given any legal functions. They are mentioned in several places in the Bill, for example, on consultation around area planning and on governor appointments. They will be funded by a grant from the Department, using a range of existing powers, one of which, similar to the CCEA provisions, needed a bit of tidying up, so we have re-enacted it in the Bill.
46. As usual from me, that has been a whistle-stop canter over the ground. I will pause and take questions from members. Chair, if you are minded to do so, it would be very useful if you and the members could give me a steer on the sort of papers and evidence that you would find useful as you go through the Bill.
47. **The Chairperson:** Chris, thank you very much. In the past, we have always found you to be helpful and knowledgeable in giving us advice.
48. **Mr Stewart:** Thank you, Chairman. In the words of Sir Humphrey Appleby, I am glad that you thought so.
49. **The Chairperson:** We will get down to the substance. I will raise a couple of points initially, the first of which is on the financial structure of ESA. We have seen the savings delivery plans and the budget that has been set. The savings that were envisaged have already been taken out of the existing education and library boards, and those are almost £15 million. The savings were originally envisaged to be in the region of £20 million. Your paper states:
- “By the end of the budget period, through the establishment of ESA and other measures, the Department’s savings delivery plan will achieve savings of £40 million.”*
50. Can you give some indication of what you think those other measures are? Is that £40 million made up of £20 million that has already been saved as a result of what has been set out in the budget plus another £20 million? How does that figure sit in regards to the Budget period that we are working in with the savings delivery plan and the savings that are already indicated?
51. **Mr Stewart:** It is £40 million in total; it is not £40 million and another £20 million from ESA. As you rightly say, the savings delivery plan is already in place. The budget had been set, so those sums had already been removed from the education budget. The other measures that we refer to are the things that, as you rightly say, have already been happening in the education and library boards and other organisations. Significant numbers of posts have been removed from the organisations to achieve those savings. Indeed, that is one of the reasons why the Minister feels that it is vital that we move ahead with the Bill and establish ESA as quickly as possible. The boards, CCMS and other organisations are under very considerable pressure now, because those savings have been taken out. They are struggling to maintain services as they would like, and they are desperate for us to establish ESA. To be clear: it is not a question of saying that we have saved £40 million and will save another £20 million. It is £40 million in total.
52. **The Chairperson:** The savings delivery plan included departmental administration, including for ESA, which was the Education and Skills Authority implementation team for those of us who need to be reminded. Savings were envisaged to be £2·7 million, £3·2 million, £3·7 million and £4·2 million. If my maths is right, that is £13·8 million. Is that figure included in the £40 million?
53. **Mr Stewart:** Yes.
54. **The Chairperson:** You will not be surprised to hear me raise a concern about why Irish-medium schools are given preferential treatment in the Bill over and above every other sector of education and way above their place in educational provision. Why is that the case? Irish-medium schools are not only given a place in the Bill, but the Bill is very blatant in that it does two things. First, clause 2(5) states:

“ESA shall ensure that its functions relating to grant-aided schools are (so far as they are capable of being so exercised) exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school.”

55. If I am right, that is probably a reference to the Belfast Agreement, where a duty was placed on the Department to promote and facilitate Irish-medium education. I am also aware that another sector was placed upon it — the integrated sector — which seems to have fallen off the cart.

56. When you turn to the appointment of boards of governors, we are told that for Irish-medium schools, those appointed have to be in favour, or supportive, of the ethos of the school and its continued viability. I would love it if that provision were given to every school in Northern Ireland. Then we might not have had the crisis that we had in the school in Londonderry a few weeks ago.

57. **Mr Stewart:** I will answer your last point first. If you look at the clause on the appointment of governors by ESA, there is a requirement for ESA to choose:

“persons appearing to ESA to be committed to the ethos of the school.”

58. On your earlier point, I do not know that the Minister would agree with your description of the Bill as giving preferential treatment to Irish-medium schools. He would point out, and you have referred to this, that the Department has two relevant statutory duties in existing legislation. In the 1998 order, there is a duty:

“to encourage and facilitate the development of Irish-medium education”.

59. In the 1989 order, in article 64, there is a duty

“to encourage and facilitate the development of integrated education”.

60. Some of the specific provisions that you refer to are clearly on foot of that statutory duty. If members are concerned that they do not see corresponding provisions on integrated education, that is because they are

already in existing law, particularly in the 1989 order. Therefore, to the extent that those two sectors are treated in a particular way, it stems directly from the statutory duties that already apply to the Department.

61. **The Chairperson:** Chris, why then take one article of the 1989 order and place it in the ESA Bill and not the other article?

62. **Mr Stewart:** We have not done that, Chair. Some of the provisions in the Bill were clearly inspired by provisions in the 1989 order in relation to integrated education. The one in particular to which you refer was not in the Bill last time round as originally drafted but was proposed as an amendment by the former Deputy Chair. The Minister at the time had indicated that she was prepared to agree with that amendment and to incorporate it into the Bill. Looking at the Bill this time round, the Minister felt that this was something that should be included from the outset.

63. **The Chairperson:** I have one other query. With regard to planning, you said that ESA will be the only body with a statutory area-planning function for the development of the education estate. Can you explain to us how that differs from the current process, especially in light of who can produce a development proposal? It would be useful for members, including the Chair, to be clear on the current situation. Who can produce a development proposal to close school A, B, or C. What change, if any, will be made to the role and function of ESA, given that it will be the only body with a statutory planning function for the development of the education estate?

64. **Mr Stewart:** Certainly. In simple terms, at present, anyone may bring forward a development proposal in relation to any school, whether it is for an existing school or a new school. It is, in large degree, analogous to the situation of making an application for planning permission. In theory, you could submit an application for planning permission for your neighbour’s house. Thankfully,

- not many people do that, but it is possible. Likewise, under education law, anyone can bring forward a development proposal for schools. In practice, that does not happen. Education and library boards bring forward development proposals in relation to the controlled sector, CCMS in relation to Catholic maintained schools, and voluntary grammar schools in relation to their own schools. Fundamentally, that will not change under the Bill, because it reflects the fundamental nature of education, which is that it is not top-down.
65. The Department does not simply create all the schools. We have a strong, healthy tradition of voluntary schools, and legislation needs to reflect that and allow the development proposals to be bottom-up in order to emerge from those who have a commitment to education. However, the handling of development proposals would be significantly different under the new provisions in the Bill. At present, any development proposal coming forward has to go through the full process, so it would be published by the relevant education and library board for consultation. The board would consider the results of the consultation. It would submit the proposal to the Department, along with its views and analysis of the consultation, and the Minister of the day would decide.
66. Under the provisions in the Bill, there would be a different approach depending on whether there is an area education plan in force. If, for any reason, there is no area plan in force, development proposals would continue to be handled in exactly the same way as they are now. If there is an area plan in force, they will be handled in a different way, and there is an additional early step. The first thing that would happen is that ESA would examine the development proposal to see whether it is compatible with the area plan. If it is, then it goes through the remainder of the process in the same way: published for consultation; analysis; decision by Department. If it is not compatible with the area plan, it stops at that point. It is rejected, is not published for consultation and does not go any further.
67. So, if you like, the area plan serves two functions. It is a statement of need for a particular area, but it is also a filter for development proposals, and only development proposals that are compatible with an area plan would get through for the remainder of the process.
68. **The Chairperson:** How does that work with article 101? Are there proposals to enhance the powers of article 101?
69. **Mr Stewart:** No, Chair.
70. **The Chairperson:** Is article 101 staying as it is?
71. **Mr Stewart:** It is. I think that many feel that it is powerful enough without enhancing it any further.
72. **The Chairperson:** Yes.
73. **Mr Stewart:** It is extremely powerful. It allows the Department to, essentially, direct any education organisation, including the board of governors of a school, to do something, not to do something or to do something in a particular way or not to do it in a particular way, and such directions are enforceable by the courts. That will not change.
74. **The Chairperson:** In fairness, will you explain that article 101 is the power that the Department has to make any decision that is not in any other piece of legislation? My view of article 101 may be biased.
75. **Mr Stewart:** It is certainly uniquely powerful, Chair. I think that that is a fair description.
76. **The Chairperson:** I want to put on public record the fact that I welcome very much the establishment of the controlled sector body. It is something that we have worked very hard to try to ensure that we get delivered. It is a sector that has been, as I have repeatedly said, the Cinderella of education for far too long. It needs to be brought into the public domain in a way that respects

and reflects the huge contribution that it makes to education, while recognising that there are huge challenges and issues. It is a very diverse sector. It is not as defined as other sectors, so I think that the working group that has been set up to consider the controlled sector body has a huge task. However, it is a welcome move, and I hope and trust that the working group will do well over the next weeks and months, as it gets up and running. I know that contacts have been made between individuals, but has it had its first meeting?

77. **Mr Stewart:** Not that I am aware of, Chair. In passing, I should say that the Minister would strongly endorse what you have said about the role of sectoral bodies generally and also about the absolute importance of the controlled sector having the same opportunity — a level playing field — as any other sector. It is a huge challenge for the working group. We are conscious of that and very grateful to the individuals involved who have taken on this challenge. We in the Department will, as the Minister absolutely expects, provide every assistance that we can and that is necessary. That is because we recognise that there is a lot of catching up to be done and that it is very important that all sectors have an effective champion to speak for them on the date the legislation is implemented. So we will certainly work very closely with the working group to that effect.
78. **Mr Craig:** Good to see you back, Chris. Long time, no see.
79. **Mr Stewart:** Thanks. I did not hear any other members endorse that, Jonathan. *[Laughter.]*
80. **Mr Craig:** I may be on my own, but there you go.
81. **Mr Kinahan:** We were not here before.
82. **Mr Stewart:** Trevor was reading his papers very carefully.
83. **Mr Craig:** The one sitting beside me was. Chris, have we any timescales for or ideas about the process for establishing the sectoral bodies?
84. **Mr Stewart:** Yes. In essence, two of them already exist in that the Northern Ireland Council for Integrated Education (NICIE) and Comhairle na Gaelscolaíochta will be the sectoral bodies for the integrated and Irish-medium sectors. On the Catholic side, things are not as far advanced, but the organisation will be known as the Trustee Support Body and will be established by the Commission for Catholic Education. I understand that it technically exists at present; it has been established as a limited company and a registered charity, but it has not yet really got off the ground. It does not have any staff and does not exist in any real form yet, but it is ready to go, or fairly close to it. The one that we openly acknowledge as being a long way behind is the controlled sector, and we cannot allow that situation to continue.
- (The Deputy Chairperson [Mr Kinahan] in the Chair)*
85. **Mr Craig:** Are efforts being made to get that brought together and implemented?
86. **Mr Stewart:** The working group has literally just been established, with the announcement in the past week or so. I do not think that the group has yet had an opportunity to meet. We will certainly be proactively making early contact with it. We are very conscious that we have to get the balance right here. We must offer all the help and assistance that the group feels it needs but, for the group and the work that it does to have credibility across the controlled sector, it must not be seen as something that the Department is controlling or directing. Our help must not be seen as suffocating or taking over, but we are certainly willing to provide any assistance that it requires from the Department.
87. **Mr Craig:** As Trevor mentioned earlier, are there any ideas or plans to have a sectoral group or anything similar for the grammar school sector?
88. **Mr Stewart:** The Governing Bodies Association will, I am sure, wish to continue to speak for the schools that

- wish it to do so. With the reference to sectoral bodies in the Bill, there has to be a definition of sectoral bodies. The important thing about sectoral bodies is that although they are referred to in the Bill, the Department does not, as it were, choose them or appoint them. It is perfectly open to any sector to establish a sectoral body if it wishes.
89. **Mr Craig:** That neatly brings me to my next question, Chris. Will we have a list or an idea of what the Department will look upon as sectoral bodies representing their particular group? Will a specific list be set up?
90. **Mr Stewart:** I do not know whether there is an intention to publish a list, but there has to be a clear understanding and recognition of the bodies that the Department and ESA intend to deal with. That is not a formal legislative process, but given that the mechanism for funding them is grant aid, it is open to any organisation to apply for funding if it wishes. For an organisation to receive funding, the Department would have to be satisfied that it had received a credible application from an organisation that represents a group of schools of a particular description.
91. **Mr Craig:** Clause 63 defines a sectoral body as one that “is recognised by the Department” and which represents:
“the interests of grant-aided schools of a particular description”.
92. I think that is open to a bit of interpretation. What does that actually mean to a layperson — someone who is not writing legislation?
93. **Mr Stewart:** It probably seems Machiavellian, but it is not intended to be. It is a recognition that we do not create these things. They are created by the sectors from within the sectors, and they could change over time. I recall the principal of a controlled integrated school asking which was his sectoral body: was it the controlled sectoral body or was it the integrated sectoral body? The only answer that I could give him was that it could be either, both or neither, and that it was for him to choose which one he wanted to speak on the school’s behalf. That clause is constructed to give us flexibility as things develop and as organisations come along and change, also recognising that this is not something that we specify in legislation. We do not say that there “shall be” five sectors and that there “shall be” a sectoral body for each. It would not be feasible or, indeed, desirable to try to do it that way.
94. **Mr Craig:** How will those sectoral bodies be funded, and will they be given any sort of guidance on what they should be doing?
95. **Mr Stewart:** They will be funded through grant aid, so it will be incumbent on each sectoral body that applies to the Department for grant aid to provide a business case setting out what it proposes to do and the functions that it proposes to deliver. The bodies will seek grant aid for that, and, if they are successful, they will receive a letter of offer with conditions attached to it, as there always is for any form of grant aid. It is a relatively light-touch control framework. Of course, there has to be accountability for how public money is spent, but we will not have a command-and-control relationship with the sectoral bodies. It is not even the sort of relationship that we will have with ESA. Obviously, there will be very clear, formal lines of accountability between ESA and the Department.
96. **Mr Craig:** Flexibility is the key, then.
97. I have one last question. Chair, I beg your indulgence on this, because it intrigues me. From what I have read of the Bill, ESA is the employing authority. I understand what it is saying; it is a bit like the relationship between a controlled sector school and a board — or am I wrong in that?
98. **Mr Stewart:** I disagree with you on that, although there are certain elements of that. If you want a comparator in the existing system, the closest is the CCMS model. In the past, members will have heard me describe this as,

- to a great extent, the CCMS model, broadened out to cover all schools.
99. We could have a very lengthy debate about the difference between an employer and an employing authority. Sometimes I think that we are in danger of drawing an artificial distinction. There is not really any distinction. The employing authority is — forgive me, I am not trying to sound glib — simply the authority that employs. ESA will be the employer in law. I much prefer to refer to it as “the employer” rather than as “the employing authority”. However, it is a delegated model, so boards of governors of schools will do the employment functions on a day-to-day basis, but they will do them on behalf of and in the name of ESA, which is the employer — much in the way that Catholic maintained schools do for CCMS, which is the employer of its teaching staff.
100. **Mr Craig:** That is the intriguing thing for me. I have to declare that I am on several boards of governors, so this will directly affect what I do. We all talk about the controlled voluntary sector, and how it treasures its independence on this issue. It can employ whom it wants for whatever it wants, within its budget and in keeping with how it runs the school. Instead of seeing this as clamping down on all that, I look at it from the controlled sector point of view, where you could, technically, set yourself up on a similar basis. Is that right?
101. **Mr Stewart:** Yes, and that is exactly the policy intention behind it. Anyone who is a governor of a controlled school knows that if you are appointing a new principal, you interview the candidates, put them in merit order, pick the top three and send those names to the education and library board, which would interview them again, and might come up with a different merit order to the one that the board of governors had arrived at. So, in effect, the board of governors of a controlled school is not, at present, able to appoint the principal: the key person in the school. Under these arrangements, it would be able to do so, and it is the same for all schools.
102. If a school decides that the board of governors should make all the appointments, no member of staff could be imposed on a school by ESA. Equally, no member of staff could be taken away from a school, by dismissal or by any other means, by ESA, unless there is a statutory requirement to do so. For example, if there were someone who was not legally able to be a teacher because they were not on the teaching register or because they had been convicted of some terrible offence, ESA could dismiss them. However, in no other circumstances could ESA usurp the role of the board of governors, if that is what the board of governors wishes.
103. It is a very complex set of provisions, and I absolutely acknowledge that. Part of the reason for that is to try to allow for flexibility. We know that our colleagues in the voluntary grammar schools do not like this; they remain opposed to it in principle and would rather that they were not part of it at all. However, the policy intention is, as you say, to allow for them, under these arrangements, to continue to do what they already do, with no interference from ESA. It is to allow controlled schools that want to move more in that direction, or all the way in that direction, to do so, and likewise with maintained schools.
104. Sometimes, we might give the impression that we are saying that everything about the controlled sector, or everything about education and library boards, is bad. That is absolutely not the case. Many people in controlled schools get a very good, very supportive service — I am not just saying that because the Rev Herron is here — from their boards, and they want to continue in that way. So maybe some controlled schools will say, “No, we do not want to do that. We do not want to make all the appointments. We might want to make some of them, perhaps for the senior staff; or we might want to make all the teaching appointments, but we are quite happy to leave the non-teaching appointments in the hands of ESA to carry out on our behalf, because we

- are busy people, serving in a voluntary capacity, and we do not have time to do all of that.” The key thing is that that choice is made by the school and not by ESA. It is a delegated model, but it is the school that decides on the extent of delegation.
105. **Mr Craig:** All of that intrigued me, Deputy Chair. The controlled sector could put itself on almost the same footing as the voluntary grammar sector. An amazing degree of flexibility is built into the Bill.
106. **Mr Stewart:** Something struck me from talking to some post-primary principals, particularly controlled grammar principals. I asked each of them the question that I would always ask in that sort of situation: if you were given three wishes for this, what would they be? Without fail, they all gave the same first wish. They said that they were very jealous of their colleagues in voluntary grammar schools, which all have bursars, and that they would love to have the flexibility to employ a bursar. That key person is almost the chief administrative officer in the school, who does a lot of the heavy lifting for the teaching staff and performs a whole range of functions that enhance the workings of the school and leave teachers free to concentrate on teaching. These provisions allow for exactly that. If the board of governors of a controlled school were to decide that having a bursar is a good thing, they could have a bursar. If they were to decide that it would be a good thing to get together with two or three other schools in a learning community to employ a bursar who would work on behalf of all of them, they would absolutely have the flexibility to do that.
107. **The Deputy Chairperson:** On the back of that, Chris, flexibility works both ways, so it is quite frightening if you are slightly suspicious of what could be behind the Bill. If I have read it correctly further on, if a school were to want to have a bursar and ESA were to decide that that is not something it should have, it could force the school to take that out of its budget. If I have read the Bill correctly, it indicates that that could then punish the school because it would be losing a chunk of its budget by choosing to have a bursar, or can we read into that that ESA will not be going down that route and would let schools have bursars if they were to want them?
108. **Mr Stewart:** ESA should have no role in that whatsoever. The school’s budget share should be set under the common funding formula or whatever will come after the common funding formula as a result of the current review. Unless a controlled school were in a situation where the delegation of its budget were withdrawn, which would be a very extreme situation indeed, the complement of staff would be for the board of governors to decide. ESA would have no role in that whatsoever.
109. **Mrs Hale:** Good afternoon, Chris. My questions revolve around boards of governors. How will boards of governors be appointed under ESA, and how is that different from the current situation? Recognising the additional responsibilities, is the Department confident that it will attract the right people to the roles, given that they are voluntary roles?
110. **Mr Stewart:** The provisions for boards of governors are quite complex, and there are a lot of complex calculations in there. However, when you boil it all down, the composition of the boards of governors is not changing. The provisions are simply shifting the function of appointing governors from the Department and from education and library boards to ESA, but the numbers are all the same. We are not changing any of that. As I mentioned earlier, the other significant addition at that point is a requirement on ESA to choose for appointment persons appearing to be committed to the ethos of the school, whatever that may be.
111. The short answer to your question is that there is very little change, other than it is going to be done by a different organisation. You make the very important point about the responsibilities on boards of governors.

- The legislation includes, for the first time, a statutory duty on boards of governors in relation to raising standards and levels of attainment. We recognise that that is a very significant challenge to place on groups of people who take on an incredibly important role in a voluntary capacity. That is why, alongside that, there is a statutory duty on ESA to provide the support, training and development that boards of governors need.
112. Your final point is difficult for me to answer. From time to time, we have great difficulty in getting sufficient numbers of people to come forward for membership of boards of governors.
113. **Mrs Hale:** I have one more question. You mentioned appointing governors who take on the ethos and viability of the school. Mervyn touched on that just before he had to pop out. What is the definition of viability? Is it a financial definition, is it based on educational achievement, or on pupil numbers? How would that all work when you have an Irish-medium unit in a mainstream school?
114. **Mr Stewart:** The reference to “viability” is to be found only in that clause to which the Chairman referred in relation to Irish-medium schools or units. The duty is on the board of governors to, in essence, do everything in its power to ensure the continuing viability of the school. The corresponding duty for integrated schools does not talk about “viability”. In essence, that duty is to preserve the integrated nature of the school: to ensure that it continues to attract numbers of children from Protestant and Catholic backgrounds. So there is not a viability requirement for every school; it is for only Irish-medium schools and Irish-medium units in other schools.
115. **Mrs Hale:** Thank you.
116. **Miss M McIlveen:** You are very welcome, Chris. I have fond memories from our last encounter.
117. **Mr Stewart:** Thanks Michelle. Two down, nine to go.
118. **Miss M McIlveen:** I have a few more grey hairs since the last time. I have a number of questions, and I did keep my files from the last time. I had the opportunity last night to look at some of them. To start very generally, has a headquarters for ESA been identified yet?
119. **Mr Stewart:** Not yet. There is no location strategy yet. Some initial work has been done, really about identifying the sorts of principles that may apply in developing a location strategy for ESA. At this stage, we do not have a site for its headquarters or any other office.
120. **Miss M McIlveen:** In our last go at this, there were discussions around there being seven functional directors with locations perhaps within existing board premises. Is that still a thought?
121. **Mr Stewart:** That is still a thought and, I think, a very likely outcome. However, perhaps in due course, it may be best to have Gavin Boyd and his team along to set out their thinking for you on that. I know that one of the types of options that they looked at in their initial thinking — in a similar fashion to the things that have happened in health — is that, to minimise cost and minimise disruption to staff, ESA may at least start off with a “footprint” derived from those of the existing organisations. You may find that, within that, there would be functional hubs. So there may be a finance hub in a particular location and an HR hub in another — something like that. That would largely mirror what Health colleagues have done.
122. **Miss M McIlveen:** At that time, you also talked about having local managers and that local footprint. I know that you mentioned a policy paper to the Chairman, and we had the very useful one from last time that set out the hierarchal nature of ESA and its likely functions. Would it be possible to develop that and forward it to us? It would be really quite useful.
123. **Mr Stewart:** Certainly.
124. **Miss M McIlveen:** Back then, I was interested in the transfer of staff, and I know that there are two levels to the

transferring of staff: from the boards and the Department to ESA, and within the employing authorities where ESA becomes the employer, for want of a better term. There are many different staff with different levels of pay, terms and conditions, and so on. The paper you presented for today mentions the Transfer of Undertakings (Protection of Employment) Regulations 2006 — TUPE — being applied. Will that be the case right across the board or just for administrative staff?

125. **Mr Stewart:** It is right across the board. There are three sets of transfers involved in this. Some staff from the Department will be transferring. There will be the staff of all the dissolved organisations: the education and library boards, including staff in controlled schools; the CCMS; the Staff Commission for Education and Library Boards; and the Youth Council. The third set of transfers involves staff who are employed by boards of governors in voluntary grammar schools and grant-maintained integrated schools. In all three cases, TUPE regulations will apply. We are also taking a further step. I am sure that you recall that TUPE does not extend to pension entitlement, but the Bill requires pension entitlement to be protected as well. That applies to all three strands of transfer and to all the staff who will be transferring to the employment of ESA. The question that I am most often asked by groups of staff, not least in our own Department, is how long that protection will last for and what happens afterwards: will ESA be levelling up or levelling down in terms and conditions? The short and sometimes unhelpful answer on the TUPE question is that it lasts until someone changes it. There is no time limit on TUPE. When someone transfers and takes their existing terms and conditions with them, they are protected until and unless their new employer manages to negotiate different terms and conditions with trade union side. That is certainly what will be happening in ESA. ESA will, of course, inherit a number of staff groups with varying terms and conditions and, as an organisation, it will have to look at its

strategy for terms and conditions. If it were to do nothing, it would be exposed to risks of equal pay claims from its employees. If it were to attempt to level down, or have a race to the bottom, it would have a very difficult relationship with trade union side. If it were to attempt to level up and race to the top, I think that the Finance Minister would have stern words with our Minister. ESA will have to look very carefully at that and come up with a strategy for addressing the differences in terms and conditions among its various groups of employees.

126. **Miss M McIlveen:** Thank you. I appreciate that you are only giving a cursory overview today rather than a line-by-line explanation. You mentioned that the legislation should be tidied up in relation to CCEA. Can you give us some detail as to what the changes will mean once the Bill goes through?

127. **Mr Stewart:** Yes, certainly. There is a whole raft of them. None of them is a significant policy change; they are technical changes. To give one example, in current legislation you will see terminology such as “vocational qualifications” and “academic qualifications”. For some time, policy in our Department and in the Department for Employment and Learning has been to move away from using that sort of terminology. So there is a different approach in the Bill. Rather than say that academic qualifications should be treated in this way and vocational qualifications in that way, the provisions allow each Department to “designate” qualifications; that is, to identify particular qualifications for which we would expect CCEA, in this case, to do the accreditation or — I hesitate to mention testing — to carry out the testing or to develop qualifications.

128. **Miss M McIlveen:** Finally, paragraph 2(1)(c)(iii) of schedule 1 refers to four persons:

“appearing to the Department, so far as practicable, to be representative of the community in Northern Ireland.”

129. The community in Northern Ireland is obviously very varied and multifaceted, as we are all very aware. What process will the Department use to appoint those members?
130. **Mr Stewart:** It will be the standard public appointments process, as regulated by the Commissioner for Public Appointments. Given the requirement for that proportion of the membership to be representative, we must ensure that we have the broadest possible process of advertising or inviting applications to make sure that we have an inclusive pool of potential applicants from which to draw. However, as I think your question implies, with a number as small as four, it is quite challenging to achieve representativeness.
131. **Miss M McIlveen:** What would the criteria be for that?
132. **Mr Stewart:** I do not think that at this point there are hard and fast criteria, Michelle. I am not certain that we could easily draw up criteria. It is one of those situations where it is easier to see a perverse or wrong outcome than to define a right one. If we chose four men, we would have a problem. If we chose four women, we would have a problem. If we chose four people from one community background, we would have a problem. So we have to avoid those sorts of perverse outcomes.
- (The Chairperson [Mr Storey] in the Chair)*
133. **Miss M McIlveen:** Seeing as we have a change of Chair, I will have one wee final question.
134. **The Chairperson:** Taking liberties?
135. **Miss M McIlveen:** The independent tribunal is obviously something new to this Bill, and it is to be welcomed tentatively at this stage. It is in the heads of agreement. Can you tell me how and when that tribunal will be established?
136. **Mr Stewart:** I am afraid that the short answer is no. The Bill takes a slightly unusual approach. The tribunal will be appointed by the Department of Education but according to regulations that will be made by the Office of the First Minister and deputy First Minister (OFMDFM). We have had a couple of initial meetings with colleagues from OFMDFM, but we are not yet at the point where they have even scoped what the content of those regulations would be.
137. **Miss M McIlveen:** So it is a work in progress.
138. **Mr Stewart:** Very much so, and it is still at stage one.
139. **The Chairperson:** I thank the Deputy Chair for helping me out. There was something that I had to attend to.
140. **Mr Kinahan:** Thank you. That was really stressful.
141. **The Chairperson:** Now you know the pressure that I am under. *[Laughter.]*
142. **Mr Kinahan:** Thank you very much, Chris. I am afraid that I have loads of questions. Chair, could I have three questions to start with and then maybe come in again at the end?
143. **The Chairperson:** Yes.
144. **Mr Kinahan:** My first questions are on the heads of agreement and whether they should be in the Bill rather than left out of it. Within the heads of agreement, there is one sentence that completely floored me. I read it to my wife two or three times. It is in paragraph 10, which begins:
- "Notwithstanding the foregoing, nothing in the new arrangements will undermine the following principles".*
145. The one that I want clarified states:
- "There will be no change to the ownership arrangements which negatively affects the respective role of the Boards of Governors of a school."*
146. **Mr Stewart:** I shall answer your question very carefully, if I may. To deal with the first point, which was about whether heads of agreement should be in the Bill, let me give the civil servant's evasive answer: that is a political

question and not one for me. The Executive have decided that they ought to be. I will say that it is unusual to have a document such as that referenced directly in legislation. It is not entirely unprecedented, but it is unusual. It presents a challenge, because the heads of agreement document is a political document. The process that came after it was that that political document was converted into policy proposals in a policy memorandum, in which we sought to clarify some of those issues and add more detail to what was proposed. That was agreed by the Executive, and we then went several stages further in the drafting of the legislation and added yet more layers of detail. The direct referencing of the heads of agreement in the Bill, as it were, somewhat short-circuits that process; it brings us back to that political document, which is simply not drafted in the same way.

147. In developing the policy proposals, we were aware of the tension between paragraph 5 in the heads of agreement and paragraph 10. It was the Minister's suggestion, and the Executive agreed, that the way to resolve that tension and to give effect to the heads of agreement was through the employment arrangements that we have set out in the Bill. They are that you have a single employer, ESA, which satisfies paragraph 5, but you delegate the carrying out of employment functions to boards of governors, which satisfies the requirement of paragraph 10. Regarding the particular clauses where the heads of agreement are referred to, I think we need to look at just how we can be certain that we have captured the detailed policy intention of the Executive in making that reference in the clause. I have to confess, Danny, that, at this point, a fairly considerable amount of work probably needs to be done on those clauses.

148. **Mr Kinahan:** OK; thank you. My second query stems from that and is a matter that we have touched on before. It concerns the role of a tribunal, which will be at OFMDFM level. What will its scope

be? Who will be appointed? Is it a legal body or otherwise? It is going to be the main power over the first year or two as every dispute is sorted. Therefore, we really need to know what it will be and what its guidelines are.

149. **Mr Stewart:** Like you, I await the proposals from our colleagues in OFMDFM to see where that will go. It is still at a very early stage. We simply do not have any firm proposals yet as to the membership of the tribunal or how it will operate. It would not surprise me if it were a straightforward three-person tribunal, probably with a legally qualified chair, such as a barrister or solicitor of, typically, five or seven years' standing, and perhaps two other people who might be chosen because they have a particular background in, say, employment law or education. It may be that the First Minister and the deputy First Minister will wish to have a role in choosing people for appointment to the tribunal, or will at least want to be consulted before the appointments are made. All of that has yet to emerge by way of proposals.

150. The tribunal will essentially be able to do three things if a disputed scheme is referred to it. It can either order ESA to approve the scheme as it is, without modification, or it can order ESA to approve the scheme with some modifications, or the tribunal could decide to make a scheme itself. The outcome is definitive whichever way; the intention is that, at the end of the tribunal process, the school has a scheme, the dispute is settled and matters can go forward.

151. **Mr Kinahan:** My third question follows on from that. You talk about flexibility and the role being restricted. However, on my first and second reading of the Bill, there seemed to be a large number of areas — whether to do with the employment scheme, a scheme of management or everything that is being passed down to the governors — where, if the governors are not doing what ESA thinks they should, either on educational excellence or children's welfare, ESA has the overbearing power to come in and

say, “You are not doing that right”. You can read it that there is an overpowering role for ESA and the Department. That is what concerns me, which is why my last question was on the tribunals. I assume that, if another, say, five or six sets of rules, guidelines and legislation are to come in, the tribunal will interpret them. Therefore, the Bill gives massive power to the Department and ESA, yet we do not know half the regulations and the rules that are coming in the future, and those will shape the Bill.

152. **Mr Stewart:** That is a fair point, and I am sure that the Committee, as was the case last time, will want to see the colour of our money on that. You will want to see the detail of those regulations before the Bill passes to the end of Committee Stage. I do not think that that would be an unreasonable thing for you to look for.

153. On the overall interpretation, it is not meant to be the heavyweight interventionist role that you may fear. It is perhaps worth looking at the history and the evolution of the provisions. We started off deliberately with the intention of having very little regulation on this. The core principle was that it was to be delegated, and schools were to choose the extent of the delegation. In essence, schools were to write the rules that they would follow day to day. ESA would simply approve those, and on it would go. There would be, and there will be, a statutory duty on ESA to put into effect decisions that boards of governors make. The only role for ESA in challenging a decision would be if it felt that a board of governors had not followed its own rules. If ESA were to come to that conclusion, it would not be allowed to second-guess and impose its own alternative decision. Its powers are limited simply to referring the matter back to the board of governors and saying, “You did not follow your own rules, so please have another go and please follow your own rules this time.” It cannot substitute its own decision for that of the board of governors.

154. There were many concerns about that, not least among Committee

members, who felt that leaving things as open as that, first, left schools in a position of uncertainty and, secondly, perhaps might leave the door open for interference by ESA or by the Department. So, we gradually added more layers of regulation. The first proposal was that we would move beyond guidance and have regulations in subordinate legislation to say what must be in a scheme and what cannot be in a scheme. That resolved some of the concerns, but some stakeholders still felt that that was not enough and that the Department could change the regulations and interfere with this. They felt that it did not give them enough certainty. So, instead of regulations, we have moved these provisions into the Bill, and that is why they are in schedule 2.

155. That still did not resolve all the concerns, and it was felt that there was a need for this independent challenge mechanism as regards ESA. That still did not resolve the concerns. It was still felt that there were too many opportunities for ESA to interfere, either by rejecting a scheme unreasonably or by modifying a scheme unreasonably, so all of that has been cut back as well. As I said in my presentation, we have moved from having minimal regulation and potential heavyweight intervention to the opposite. It is now very limited intervention and quite significant and heavily engineered regulation. That is a double-edged sword. On the one hand, it gives schools and other stakeholders some certainty about what they can and cannot do and what ESA can and cannot do. On the other hand, we now have a very complex set of provisions and a very complex set of rules for a board of governors to sit down and find their way through. All of that, of course, is an Executive decision.

156. **Mr Kinahan:** It still terrifies me.

157. **Mrs Dobson:** Chris, it is nice to meet you for the first time. I will follow on from Brenda’s comments and explore a bit further the matter of ethos. I have met representatives from the voluntary grammar sector, which you spoke about earlier. They are extremely concerned

- that the ethos of their school will be lost once ESA is established. How do you intend to specifically define the commitment of governors to the school ethos? How will you know how committed they are to the ethos?
158. **Mr Stewart:** I think that that will have to be built into the application process for potential governors. In one sense, it is not an entirely new thing. Potential governors already indicate the types of schools or the particular schools that they wish to serve. So, in nominating themselves for governorship, they are already indicating at least an interest in, if not outright support for, the ethos of a particular school. I think that we will need to sharpen up the questioning and the application forms.
159. **Mrs Dobson:** Who decides on the ethos? Does ESA decide? Ultimately, whose decision is the ethos of the school?
160. **Mr Stewart:** That would be a matter for the school. Ethos is one of those difficult things to define. We can all recognise it, but defining it or writing it down and capturing it in any sort of documentation is incredibly difficult. A core principle is that it is not for ESA, the Department or any other statutory authority to define something like ethos. For ethos to be effective, it has to be something that comes from within the school, with the genuine buy-in of the whole school community. As I said, we need to look for that by sharpening up the questioning on the application forms for prospective governors, asking them to indicate, perhaps, which schools or types of schools they wish to serve on and why. In asking the question why, we would be looking for commitment to the ethos of the school.
161. **Mrs Dobson:** I am pleased that you spoke about retaining the school ethos, because that is a major worry out there. Do you want to come in on that, Jonathan?
162. **Mr Craig:** Is that all right, Chair?
163. **The Chairperson:** If you want to, yes. That just made my job a lot easier, Jo-Anne. Thanks.
164. **Mr Craig:** Jo-Anne raised an interesting point. Last week, I sat down with Friends' School, one of the local grammar schools. As a Quaker school, its ethos is very much a religious one. Is there a role for the trustees when it comes to the appointment of the board of governors? Have I read the Bill right? In the case of Friends' School, the trustees are the governing body that appoints the majority of governors to the school, so the concept of keeping that religious ethos stays within the school. Will that continue?
165. **Mr Stewart:** Absolutely; that will continue for that school and other schools in the same situation, where what are usually known as foundation governors are appointed by trustees. That is not changing. The proportion of governors and the make-up of boards of governors are not changing. The only change is that those appointments that are currently made by the Department or by education and library boards will in future be made by ESA. The proportion and make-up of boards of governors are not changing. Those appointed by the trustees of a school to reflect its ethos, history and traditions will still be there.
166. **Mrs Dobson:** I want to move on to area planning. Clause 28 requires ESA to consult relevant bodies when drawing, changing or revoking plans. However, clause 28(3) states that ESA does not need to consult if it:
- “determines that the changes to the plan for the area are not of sufficient importance”.*
167. How will you determine “sufficient importance” and who makes the final decision?
168. **Mr Stewart:** The final decision would be for ESA. However, as with any other such decision, if ESA were behaving unreasonably, that could be challenged by someone seeking judicial review. That clause has perhaps given rise to more concern than we hoped it would and certainly more than we thought it would. It is not a particularly unusual thing. If you look at the provisions on area planning generally, you can see that they actually follow quite closely the Planning

- (Northern Ireland) Order 1991, in terms of how development planning would work. That provision is a straightforward lift. In practice, it means that if there is going to be a major or significant change to a plan or there is a new plan, the full consultation and involvement mechanism should come into operation. However, if it is a very minor change, such as shifting a boundary by 50 metres or something, and there genuinely is no significant consequence, the provision recognises that going through the panoply of consultation and involvement may be unnecessary and disproportionate. It is absolutely not intended to give ESA an opportunity to avoid full and proper consultation when key decisions are being made about the future of schools.
169. **Mrs Dobson:** That is a massive concern. What would happen in the case of a dispute where it is alleged that the changes are of sufficient importance and the Department has chosen not to consult?
170. **Mr Stewart:** An aggrieved party could take two routes, assuming that the aggrieved party is a school, its board of governors or another stakeholder. There are two particular clauses in the Education and Libraries (Northern Ireland) Order 1986 that relate to this. Article 100 contains a dispute resolution mechanism whereby such disputes could be referred to the Department for resolution. Article 101, which we mentioned earlier, goes a bit further. Article 101 has two limbs to it. The Department can decide to use article 101 to direct ESA to do something if it feels that that is necessary, and there is also a complaint mechanism in article 101. If the Department were to receive a complaint that ESA has been acting unreasonably, perhaps in an example such as this, the Department must investigate that complaint. If the complaint is upheld, the Department must direct ESA to remedy the matter. If a failure to consult on a minor change to the plan were challenged, the Department would be obliged to look at that if a complaint were raised.
- If the complaint were upheld, ESA would be directed to go through the full consultation and involvement process.
171. **Mrs Dobson:** There are major concerns in my constituency of Upper Bann.
172. Finally, the Bain review recommends:
“ESA should establish, lead and co-ordinate planning groups that are representative of all the educational interests”.
173. What are the details of how the Department intends to establish these groups to ensure that they are representative? I asked Caroline that earlier.
174. **Mr Stewart:** There is no detailed specification on that as yet, Jo-Anne.
175. **Mrs Dobson:** You will ensure that they are representative?
176. **Mr Stewart:** Yes. In the Bill, we have provided for, if you like, the ability to regulate that if it is necessary. There is quite heavy engineering around the area planning clauses. We can provide guidance that ESA must take into account, or we can bring forward subordinate legislation — regulations — on the content of plans and on the process for drawing up plans. So, if it were felt necessary to place in legislation how those planning groups would be constructed and involved, we could do so. The opportunity is there.
177. **Mrs Dobson:** As you say, it needs to be based on proper understanding of local communities. Presumably, that means that there would be a requirement for the full involvement of local community groups, parents, and so on, who have the best knowledge — more than ESA officials.
178. **Mr Stewart:** Absolutely. Again, there are three levels or strands of consultation and involvement in that. There is a fairly standard requirement to consult district councils and to publicise plans and invite public comment on those. You see that all the time in development planning. There is also a specific duty to go further than to consult: to consult and involve sectoral bodies and certain

- other named persons in bodies on the area planning groups. Then there is a more general power to consult and involve more widely than that, and that involves parents, staff and providers of youth services and early years services. You might well ask why there is a duty to involve some stakeholders but only a power to involve others. The answer is, simply, practicality. It would not be practical to have an absolute duty to involve every parent, every child and every member of staff, but, clearly, it is good practice and the Minister's policy intention that that involvement will be widespread and real. It is practical, hence there is an absolute duty to involve the relevant sectoral bodies and the other key stakeholders.
179. **Mrs Dobson:** So, is it up to ESA and the Department to decide, rather than following statutory requirements?
180. **Mr Stewart:** The backstop of statutory requirement is there if we need it. The Minister will want to see ESA's proposals on how it will carry out area planning. They will all be subject to ministerial approval. If he is not satisfied and feels that regulation is necessary, the power is there to make the regulations.
181. **Mr Lunn:** It is good to see you back, Chris.
182. **Mr Stewart:** Thank you, Trevor.
183. **Mr Lunn:** It will be nice to get some unambiguous, clear and lucid advice.
184. **Mr Stewart:** I think that I have had at least five votes so far.
185. **Mr Lunn:** I think that you are safe enough for the time being.
186. I am sorry to harp on again, but I return to the issue of ethos. Clause 39 refers to the appointment of governors and the requirement that they must subscribe to the ethos of the school. I think that is what it says. I am sure that the Bill contains various requirements or conditions that would allow a school or, perhaps, ESA to dismiss a governor. Would evidence that a governor did not subscribe to the ethos of the school be sufficient grounds for dismissal?
187. **Mr Stewart:** I doubt it. Let me expand on that a little, if I may. The powers to dismiss individual governors or an entire board of governors are, if I recall correctly, in the Education and Libraries (Northern Ireland) Order 2003. Article 23, I think, allows the Department to make regulations that would provide for the dismissal of governors or an entire board in prescribed circumstances. Those regulations have never been made. The Department is considering such a set of regulations. Therefore, we would have to think through very carefully what the particular circumstances would be to justify dismissal. Clearly, when that power was first legislated for, I do not think ethos considerations were part of the deliberations. We were thinking about things such as financial impropriety, some sort of improper behaviour or a gross failure to do the job of governor. We would have to think long and hard about whether it would be feasible or desirable to add a test of commitment to ethos into that.
188. **Mr Lunn:** It is in the Bill.
189. **Mr Stewart:** It is in the Bill as something that should be taken into account when choosing people for appointment. However, to use it as a test for dismissing someone would be a whole different ball game. We would have to think long and hard about whether that is practicable.
190. **Mr Lunn:** Hypothetically, if the Department appointed someone to be a school governor, despite that school having considerable misgivings about that person's ethical suitability — "ethos" now being in the Bill where it never was before — and that person came to board meetings and declared an intention to change the ethos of the school because they did not approve of its voluntary status, pupil selection method, the fact that it had a bursar or whatever else, could that be grounds for dismissal?
191. **Mr Stewart:** I note from the early part of your question that we are talking about a hypothetical situation —

192. **Mr Lunn:** Absolutely; yes.
193. **Mr Stewart:** — and I will answer in similar vein, if I may. I think that the view that the board of governors might take of such behaviour, or the ultimate view that ESA or the Department might take of such behaviour would be, “How does it manifest itself? What is the effect on the running of the school?” Governors, as individuals, are entitled to have whatever views they wish on any matter. However, if their behaviour is such that it is interfering with the operation of the board of governors and with the running of the school, that is something that, yes, could be taken on board. I stress that we are talking entirely hypothetically.
194. **Mr Lunn:** Absolutely; yes.
195. I go back to the employment role and the employer/employing authority situation, which I take to be the same thing, so ESA is the ultimate employer or employing authority. Who is legally responsible, then? Is there any change to the legal liability situation when it comes to claims for injury or something more complicated? I understand that, at the moment, except in the case of voluntary grammars, the Department picks up the tab and that, without any insurance of its own, claims that are settled just have to come out of general funds. At present, voluntary grammars have to carry their own quite onerous and expensive insurance, which includes director and officers’ liability, and the whole works. Would the new arrangements mean that, at least theoretically, voluntary grammars would no longer have to carry that cover because ESA would pick up the tab?
196. **Mr Stewart:** I think that the answer is yes, Trevor, specifically around employment matters. There may be certain other types of insurance that they will continue to need to carry because they are still the owners of premises.
197. **Mr Lunn:** I am talking only about liability cover.
198. **Mr Stewart:** For employment liability, yes, I think that the situation is as you described it.
199. **Mr Lunn:** I would be interested to hear more about that.
200. My final question concerns — I forget who raised it earlier — the contrast between the explicit requirement on ESA to foster the Irish-medium sector and the lack of mention of the integrated sector. You said that the integrated education provision goes back to the 1989 order, whereas the Irish-medium one comes from the 1998 order. Is that correct?
201. **Mr Stewart:** The duty on Irish-medium education is in article 89 of the 1998 order, while the duty on integrated education is in article 64 of the 1989 order, I think.
202. **Mr Lunn:** I did say that you were lucid. That is fair enough.
203. **Mr Stewart:** I cannot sleep at night without a good feed of the 1986 order. *[Laughter.]*
204. **Mr Lunn:** I think that you said in your presentation that bits of these orders had been done away with and that some of them had been carried into this Bill. Why, when a major Bill is being prepared, is the opportunity not taken to tidy up the whole thing? It does not make sense to me. I accept what you say, but NICIE and the Irish-medium sector appear to be getting slightly different treatment. It would have been so easy to bring forward the NICIE requirement as well.
205. **Mr Stewart:** You ask two questions. One is a technical one, and the other is a policy one, on which I can hide behind my usual answer that that is a matter for the Minister. The Minister and, ultimately, the Executive make the decisions on which provisions are included in the Bill and which are not, and that is not a matter for me. On the technical question about consolidation, yes, that is almost a civil servant’s prayer. The short answer is that you cannot hit a moving target. We cannot consolidate the legislation until we stop

- making more. It may be that, after this Bill, the General Teaching Council Bill, which is in the pipeline, and perhaps another Bill that will come after that, we will have an opportunity to pause and say let us move from having 14 orders, as it might be then, to one or two. That is a huge task. It would be well worth doing and be of considerable benefit to everyone in education if we can have a much simpler canon of education law that people can easily access.
206. **Mr Lunn:** You could not say, in a Bill such as this, that all the provisions of the 1989 order, except those that have been expunged, are now considered to be part of this Bill? You could add an addendum to say what the 1989 order said.
207. **Mr Stewart:** You might think that I would say this as a civil servant, but it is not as easy as that. Some people might look at this Bill and say that it is just the Bill that we had last time and the second Bill that did not really see the light of day with a few bits chopped off and put together. In a sense, it is, but the instructions to the draftsman to prepare run to 55 pages. The task of consolidating existing legislation is possible, but it would be a mammoth one. It would be one that the Office of the Legislative Counsel would take forward rather than administrative civil servants, and it would be a very major task that would probably require a year or two.
208. **Mr Lunn:** I am finished, Chairman. I am told that the argument about substitute teachers and the Department's ability to restrict the use of retired teachers that is before the Public Accounts Committee started in the early 1980s. It is still going on, so it must relate to some order that was made even before that.
209. **Mr Stewart:** This started in 2002, when I was a young man.
210. **Mr Lunn:** You are still a young man.
211. **Mr Stewart:** Thank you. Can we have that recorded?
212. **The Chairperson:** It is recorded.
213. Chris, we have opened up the discussion, and there is a raft of other things that we need to come back to. I will put some other concerns on the table, the first of which is to do with inspections. People were worried that ESA would be Big Brother, and a lot of that has been clawed back, albeit in regulations that are subject to the control of the Assembly so that ESA is not seen as Big Brother. The powers that have been given to the inspectorate make it look like some organisation from a former Communist state. I cannot see what giving an inspector the power to collect papers, documents and computers has to do with ensuring that a child is getting a good education, other than an inspector being used to identify primary schools that are not complying with guidance from the Department on independent tests. It has other wider implications. That is a personal view, not the Committee's view, that the inspectorate should be separate from the Department and should have the power to inspect the Department as much as it does the schools. I can tell you that that would raise some concerns. It should be there for the benefit of children, not for the benefit of an institution. I have major concerns about the inspectorate.
214. The other concern is about clause 3(4) and clause 3(5), which are on employment. More work needs to be done, and I understand that those subsections were put in very quickly.
215. When will we get the Department's view as to how that will be modified, changed or enhanced? The Bill has its Second Stage on Monday, and we do not want to delay the way in which we deal with it. However, the changes that the Department tells us that it will bring in will form an integral part of our decisions. Have we any indication now as to what the timescale is for that further piece of work?
216. **Mr Stewart:** Not as yet, Chair, but I absolutely recognise your point that the Committee will want to see our proposals on that as early as possible. I will take a further steer from the

- Minister on what direction he wants those clauses to go in.
217. **The Chairperson:** The other point — this may help Trevor, and it will certainly help us all — is that we have the repeals at the end of the Bill. You may tell me that they are already there and we have not seen them, but do we have the orders that will remain in operation, as regards the 11 other pieces of subordinate legislation? We have all the repeals, but may we also have a list of what remains in existence, for the purpose of cross-referencing?
218. **Mr Stewart:** Yes. If I recall correctly, I think that last time we produced for you a paper that set out the scope of the existing orders. We can get that out and dust it off again, yes.
219. **The Chairperson:** That would be very helpful.
220. **Mr Stewart:** On inspection, the effect of the particular provisions differs for the three Departments for whom the inspectorate operates. For the Department for Employment and Learning, the powers are essentially unchanged. They are the same as those in the 1986 order. For the Department of Culture, Arts and Leisure (DCAL), they are actually chopped back a bit. DCAL did not see the need for extensive specific powers for inspection; hence they are not in the Bill. DCAL inspections will be carried out under one very simple, broad provision that is in the Libraries Act (Northern Ireland) 2008.
221. On the provisions on the inspection of schools, I absolutely hear what you say about inspecting the Department. I think that, for the time being, we will simply have to submit ourselves to scrutiny by the Committee until or unless that changes.
222. Yes, the powers are enhanced from those in the 1986 order. We will of course take on board carefully the views of the Committee and of individual members as to whether that is the right direction. However, they are perhaps not as progressive or as unusual as you fear. Those particular provisions are almost a direct lift from some of the powers that Ofsted has in the Education Act 2005, and we did not even carry them all across. Therefore, they are not unusual but would be a standard tool in the box that any inspectorate would have.
223. **The Chairperson:** Yes, but those were not the powers that CCEA wanted Ofsted to have for its inspection. That is one of the reasons why CCEA decided that it might want to go down a separate route and not become as much under the oversight of Ofsted or Ofqual — Ofsted for the purpose of inspections. We will have to revisit that one.
224. **Mr Stewart:** CCEA would be within the scope of the inspection provisions that are in the Bill, as would be ESA.
225. **Mr Kinahan:** Consultation is one of my biggest concerns. From the brief that we got beforehand, we know that consultation was last done, I think, in 2006. A whole lot of children have gone through the system in that time; a whole lot of parents are no longer involved; and a lot of new parents and teachers are involved. Are there any plans to re-consult? On the back of that, having spoken to various bodies yesterday that represent parents and teachers, I get the sense that there is a great feeling out there that they have no idea what is coming. No one has explained it, given them a chance to discuss it and get us to the point at which we get to how we all see consultation, which is that it has been decided that this is your last chance to have a good go at us. Is there a plan for proper consultation?
226. **Mr Stewart:** The point is well made about communicating what is happening to the education sector and those in it. I absolutely accept the point that you make on the importance of doing so. There are no plans for formal consultation. Like everyone else in the Department, I have to follow the decisions that have been made by the Executive. The Executive decided to proceed with what was set out in the heads of agreement. In the heads of agreement, the timescale was very exacting. In fact, the Bill should now

- be law. It should have come into effect last July, but there simply was not time, within the timescale that was set for us by the Executive, for public consultation.
227. **Mr Kinahan:** I move on to an issue that we touched on earlier. How is ESA going to work locally? There will no longer be five boards, but Fermanagh or Omagh or Antrim may want to work in different ways. Will there be a local management grouping or system?
228. **Mr Stewart:** Yes, there will. Last time, this was a very significant concern on the part of many members that there was a real danger that ESA could be some sort of remote monolith, interfering in schools from a distance. They felt that, on the one hand, it would be a heavy hand from the centre, while, on the other hand, it would not provide the close support and understanding that we know that colleagues in education and library boards do provide.
229. In response to that, the previous Minister made it very clear that the location strategy needed to include proposals for local offices. The idea was not that services would be withdrawn. What you might call back-office services could be concentrated in a number of hubs, but front-office services, which need to face schools and other education providers, far from being moved further away from them, needed to be moved closer, through a network of small local offices that would be on hand and very responsive to what schools need. That remains the policy.
230. **Mr Kinahan:** Is there a draft of that plan?
231. **Mr Stewart:** No, not yet. It is one of the pieces of work that had got a certain distance last time around and that went into abeyance when the Bill fell, and it now needs to be taken forward again.
232. **Mr Kinahan:** I have two more questions. Your briefing paper talks about supporting professional development and says that ESA will support schools or groups of schools to provide or procure services themselves. Is there a plan to pass more spending decisions down to schools in future?
233. **Mr Stewart:** Yes. One of the criticisms that is often made, rightly or wrongly, of education and library boards is that although it has very good people working in it, the Curriculum Advisory and Support Service (CASS) is too inflexible. It provides certain services, and if those are what schools need, they can avail themselves of them. If those are not what schools need, there is nothing else, so the proposal here is for something much more flexible. ESA will still provide services, but schools may wish to provide them themselves. They may wish to get together in groups and either provide them for themselves or procure them for themselves. It is to provide for that flexibility and to ensure that schools get what they need, as opposed to what ESA wants to provide.
234. **Mr Kinahan:** My last question is on clause 2(5), which deals with Irish-medium education. It begins:
“ESA shall ensure that its functions relating to grant-aided schools”.
235. That implies to me that all grant-aided schools are going to have to teach Irish in future.
236. **Mr Stewart:** No. Let me reassure you on that. It is about ESA's functions rather than the school's functions.
237. **The Chairperson:** Following on from that, I take issue with you, Chris, about CASS. In lots of boards, CASS does not even exist because of the vacancy controls from 2006. Where it is located unfortunately has not become an issue, because it is hardly there.
238. One of the biggest issues to do with financial arrangements in schools is the split. I know that there is not a straight comparison between authorities in England and here, but we see all the figures that show that the delegated budget in other jurisdictions is 75%-plus, whereas here a huge amount of money is still retained. Depending on what figures you look at, anything from 55% to 60% is still held by the centre. We were always told that one of the reasons why the delegated budget could not move more towards the schools is because

you have to give it to the education and library boards, who then decide to do all the things that they have done historically. What is the financial model that will underpin that process? Have we any idea about what the new delegated budget will look like?

239. **Mr Stewart:** That is not so much an issue for this Bill as an issue for the review of the common funding scheme, which Sir Bob Salisbury is taking forward.
240. **The Chairperson:** He is coming to us next week.
241. Members, thank you. Chris, thank you very much. I have no doubt that we will be seeing more of you in the weeks ahead.
242. **Mr Stewart:** I apologise to members for that.
243. **The Chairperson:** Thank you for coming to Omagh. I appreciate that it is a journey for you.

10 October 2012

Members present for all or part of the proceedings:

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

Witnesses:

Miss Caroline Perry *Research and Library Service*

244. **The Chairperson:** We move to the research briefing on the Education Bill. I thank Caroline for a very comprehensive paper. As always, Caroline produces for the Education Committee information that is invaluable to us. Caroline, thank you again.
245. **Miss Caroline Perry (Research and Library Service):** The Education Bill provides for the establishment of the Education and Skills Authority (ESA) and introduces a range of other provisions relating to the management and governance of schools. In this briefing, I will touch on some of the key clauses as set out in the executive summary. I will look at how they are different to the current provision, and I will discuss some areas that could be given further consideration. I am happy to take any questions afterwards.
246. First, I will look at Part 1 of the Bill, which is on ESA. Clause 3 brings about a key change in the existing arrangements in that ESA will become the single employing authority for all staff in grant-aided schools. ESA will have responsibility for the collective employment functions, such as strategic workforce planning and trade union negotiations, but school-specific functions, such as recruitment and staff discipline, will be delegated to the boards of governors of individual schools. This clause also details the submitting authority of schools, which will be responsible for preparing an employment scheme and a scheme of management. That will be the boards of governors for controlled or grant-maintained integrated schools and the trustees for voluntary schools, or the trustees can delegate that to the boards of governors. Where the trustees are the submitting authority, they have to have due regard to the views of boards of governors, so consideration could be given to the weighting that is to be given to their view. It is important to note that clause 3(5) confirms that the role of boards of governors in changing admissions criteria for a school remains the same, so they retain that right.
247. I will now look at employment schemes and schemes of management. Under clauses 4 and 5, the submitting authorities will be required to prepare and submit to ESA an employment scheme, which will set out the employment functions that are to be carried out by the boards of governors, such as the appointment of staff and arrangements for discipline. Under clause 5, the Department may issue guidance, including model schemes, and submitting authorities have to have regard to such guidance in developing their schemes. Clauses 33 and 34 require every school to have in place a scheme of management that will provide for the membership and procedures of boards of governors and the management of the school.
248. The requirements for the content of schemes of management will be broadly similar to those that are in place; they have been in place since 1989. The key differences relate to who has responsibility for developing schemes. Currently, it is the Council for Catholic Maintained Schools (CCMS)

- and the education and library boards for maintained and controlled schools respectively, and it is the boards of governors for voluntary and grant-maintained integrated schools.
249. The other key differences relate to the use of model schemes devised by the Department. Currently, for controlled and maintained schools, standard schemes are in place that are devised by CCMS and the education and library boards, but the voluntary grammar and grant-maintained integrated schools will have their own scheme of management. Finally, it offers boards of governors the opportunity to refer schemes to a tribunal if they are not happy with them.
250. If a scheme differs from a model scheme, the submitting authority has to give ESA information on how it differs from that model scheme. In this area, consideration could be given to a number of factors; for example, the basis on which the model schemes will be devised, whether that is the management type, school phase or school size. Other factors could be the extent to which submitting authorities will be permitted to differ from model schemes in practice and any potential implications of using model schemes for school autonomy and flexibility.
251. Clause 24 puts area planning into statute for the first time. Under clause 28, ESA has to consult the relevant interests in preparing, revising or revoking the plans. Clause 28(3) states that this requirement does not apply:
- “if ESA determines that the changes to the plan for the area are not of sufficient importance”.*
252. Consideration can be given to a number of areas here. For example, how those areas will be decided and whether plans for neighbouring areas will be considered together; whether plans will take into account cross-border provision; what criteria and indicators will be used to determine the adequacy of current provision; what data and indicators will be used to forecast enrolments; and whether a rural-proofing process will be carried out on area plans to see whether there will be a differential impact.
253. The Bill also introduces new arrangements for governors. Clause 38 places a new statutory duty on boards of governors to promote high standards of educational attainment by pupils. Consideration might be given to how high standards of educational attainment will be defined; the potential implications of that for the recruitment and retention of governors, particularly for schools that face challenging circumstances; and the implications for boards of governors if the educational attainment in their school is deemed to be of an inadequate standard.
254. Under clause 39, ESA is required to appoint governors that are committed to the ethos of the school — in the case of Irish-medium schools or those with an Irish-medium unit or stream, to the viability of that part of the school. Consideration might be given to the implications of those requirements for the recruitment of governors. So, for example, how the commitment to a particular ethos or the viability of the school will be defined and the process by which that will be ascertained in practice.
255. Clause 44 deals with school inspections and educational and youth services. There are quite significant changes here. They include a widening of the role, so that the inspectors will be required to advise the Department on any aspect of establishments, whereas they are currently required to advise on any aspect of the curriculum. The areas that inspectors may inspect and report on are detailed and include teaching and learning management, as well as equipment, resources and accommodation. They will have new powers to inspect, copy or take away documents from the establishment being inspected, and to obtain access to any computer and associated material. It is stated that that power may be exercised “at reasonable times only”.
256. There is a new duty on the responsible authority — typically, the board of

- governors — to prepare and publish a statement on the actions that it intends to take in light of the inspection report. Consideration might be given to the potential implications of these changes for the schools, the boards of governors and for the staff. Clarification might be sought on how the inspection of equipment, resources and accommodation will feed in to inspection reports and ratings; how any documents taken will be used and stored; and what is meant by “at reasonable times only”.
257. Clause 62 sets out requirements for the Office of the First Minister and deputy First Minister to make regulations for the appointment of the tribunal that would review decisions on appointment schemes and schemes of management. That is to ensure that they align with the legislation and the heads of agreement. Consideration might be given to how that tribunal will be appointed and what measures will be taken to ensure that it is independent and objective.
258. Clause 63 deals with, and sets out definitions for, sectoral bodies. Consideration could be given to the timescales for those bodies to be established and the proposed funding arrangements for them.
259. Finally, the membership of ESA: schedule 1 states that there will be a chair appointed by the Department. There will be 12 appointed members; four will represent the interests of controlled schools, four the trustees of maintained schools and four will be representative of the community in Northern Ireland. There will also be eight political members, appointed under d’Hondt on the basis of party strengths in the Assembly. Consideration might be given to the extent to which that proposed membership represents the interest of all stakeholders in education and the wider community, and whether it is likely to result in an appropriate mix of skills and expertise.
260. **The Chairperson:** Caroline, thank you very much. I will watch and listen carefully on Monday to see how many members actually use Caroline’s paper, but don’t you be watching me. I will open the meeting to members’ questions because, as I said, yours is an extremely useful and very good overview. Thank you very much for an invaluable piece of work.
261. **Mr Kinahan:** I feel much the same; the overview is very useful. Most of our questions will be for the Department rather than you, Caroline.
262. **The Chairperson:** Sorry for interrupting. Somebody’s mobile phone is going off. Might it be in the public gallery? No? I hope that it is not Robert Herron’s. May I just welcome the Reverend Robert Herron from the Western Education and Library Board. We look forward to meeting you later. Sorry, continue Danny.
263. **Mr Kinahan:** I think that I will leave my questioning for the Department. Thank you Caroline.
264. **Mrs Dobson:** The paper is excellent, as usual. I have a couple of points. From your briefing paper, it appears that there was very little consultation for a Bill of this size and scope. Is that normal?
265. **Miss Perry:** I had a look at previous Bills that had been through the Assembly. There has been policy consultation on this from around 2006. That was done on 87% of Bills that have come through the Assembly since 2006. With regard to consultation that has been done on draft legislation, that has been done on 27% of Bills. So it is fairly in line. However, there have been quite a few changes made to this legislation since those initial policy consultations were done in 2006.
266. **Mrs Dobson:** It just appears that, with four years to consult, there has been very little consultation. We can see also that the Department has not consulted with the public or schools. When you were conducting your research, did you find any evidence that it consulted with other third parties, possibly private consultants? Is there any evidence of that?
267. **Miss Perry:** I am not sure about that. I know that the consultation involved a working group and a range of

- stakeholders in all the policy papers and the ongoing development of the legislation. I am not sure about third parties.
268. **Mrs Dobson:** Could that be explored? It would be useful to find out whether they had done that.
269. **Miss Perry:** Certainly, the departmental official, Chris Stewart, might be able to answer that question for you.
270. **Mrs Dobson:** Finally, in your section on area planning, you say:
“ESA should establish, lead and co-ordinate planning groups that are representative of all the educational interests”.
271. Have you any details of how the Department intends to establish ESA's groups and ensure that they are representative?
272. **Miss Perry:** No, it is not clear in the legislation or in the explanatory and financial memorandum. Those recommendations were from the Bain review of 2006, the report of which recommended area-based planning. That was Bain's vision for area-based planning. Clarification could be sought as to how that would work in practice.
273. **Mrs Dobson:** That would be useful. Thank you very much, Caroline.
274. **Mr Lunn:** Thanks again, Caroline. Definitely, we are going to go to the employment schemes, employing authority, employer, and so on. The voluntary grammar schools have a concern about their loss of independence and freedom of action, the independent control of their own schools, and their ability to make these schemes and control them. What seems to be happening is that the Department is saying that ESA is just a longstop or a backup in case all else fails. These schools will continue to have the same autonomy. I have not had a close look at all this yet, but when I looked through the Bill, it says, fairly explicitly at times, that that is exactly what the schools will have. However, they are still concerned about it.
275. Clause 4(6), on the bottom of page 3 of the Bill, refers to schedule 2. I am trying not to get too technical here; I have been lying awake all night worrying about this. *[Laughter.]*
276. **The Chairperson:** Well, you had not very long to do so. I had only from 2 am to 6 am.
277. **Mr Lunn:** Schedule 2 is the “Provisions required in employment schemes” and, in simple terms, clause 4(6), on page 3 says:
“The Department may by order amend Schedule 2”.
So:
“The Lord giveth and the Lord taketh away”.
278. There is always a caveat, is there not?
279. **The Chairperson:** There is.
280. **Mr Lunn:** I know, from speaking to the Governing Bodies Association, that it is concerned by that. Have you any thoughts on that?
281. **Miss Perry:** Do you mean about the power to change that?
282. **Mr Lunn:** I mean about the assurances — I do not want to ask you a political question. I mean about the assurances that have been given to the voluntary grammar schools, and the fears that those schools have, in particular, the fear that they may not be allowed to be represented as a sectoral body. I am not necessarily a huge fan of the grammar schools but I think they have a point. They have, what is it, 40% of the post-primary intake?
283. **The Chairperson:** I think it is 46%.
284. **Mr Lunn:** Let us say that voluntary grammars have 40% of the post-primary school population, and yet they will not be formally represented. They are sensitive about these things. Maybe we do not want to go into that level of detail today, but I wonder about that line.
285. **The Chairperson:** Perhaps, in fairness, Chris should deal with that. Caroline may want to comment, however.

286. **Miss Perry:** Certainly, it is by order, so I guess that we would have to bring in regulations to change that. Schedule 2 sets out what will be in the employment scheme. When producing their scheme, they must have regard to model schemes and guidance from the Department. I cannot speak for the Governing Bodies Association. Perhaps there are concerns around that; I am not sure.
287. **Mr Lunn:** I do not want to put you on the spot. It is more about the legal interpretation of what that means. It looks pretty straightforward. I will ask [*Inaudible due to mobile phone interference.*]
288. **The Chairperson:** OK. In the absence of any other comments, thank you again, Caroline. I cannot stress enough that your paper is very useful. I always like an overview and summary of any paper that I get, and this is very useful.

14 November 2012

Members present for all or part of the proceedings:

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

289. **The Chairperson:** The next item on the agenda is the Committee Stage of the Education Bill. The Committee Stage commenced on 15 October and is scheduled to conclude on 3 December. Standing Orders allow a Committee to put before the Assembly a motion to extend a Committee Stage. The Committee Clerk's note sets out a timetable for evidence-taking that takes us to the end of January, followed by informal and then formal clause-by-clause scrutiny, which takes us to the end of March. It is therefore proposed to extend the Committee Stage until 8 April. If the Committee completes its evidence-taking and deliberations earlier, a report can be produced more quickly and the Committee Stage immediately concluded. The 8 April 2013 reporting date would allow the Department ample time to arrange the subsequent stages of the Bill before mid-May.
290. One of the issues to come out over the past couple of weeks has been trying to get all the organisations into some order and to get responses from them, even at this stage, in relation to a date. Yesterday, I received a letter from one of the unions, which I passed on to the Committee Clerk, dated 6 November. It was about the union coming to address the Committee. That is beginning to filter out, even though we have put out the advert and have e-mailed. I want to be absolutely sure that, given the huge importance of the issue, we will not have any organisation or group feeling that they have been ignored or that their views have not been heard. That has delayed us somewhat in putting a table together. The Committee Clerk assures me, however, that we are making progress on that.
291. Is the Committee content to put down a motion to extend the Committee Stage of the Education Bill until 8 April 2013?
- Members indicated assent.*
292. **Mr Kinahan:** As I try to learn the job, and everything else at the same time, I find that parents are the hardest group to speak to. There are parent teacher associations, Parents Aloud, and two or three other organisations. However, we need to make sure that we find a way of talking to parents, because there does not seem to be a central organisation.
293. **The Chairperson:** One of the difficulties is knowing how much union representatives reflect their members, and how much governing bodies right across the piece — the Council for the Curriculum, Examinations and Assessment, the Council for Catholic Maintained Schools, right through to the boards — reflect the views of their membership. That is always a big challenge. We need to find a way of ensuring that the public understands what this is all about, because vested interests will ensure that there is a version out there of what they think it is all about. We may have our views, but as a Committee, we want to try to ensure that we hear a wide spectrum of views and that we are well informed on all the issues.
294. **Mr Lunn:** I tend to agree with Danny. I do not think that we can do much about organisations; we have to assume that they reflect their members' views, particularly the unions. However, my impression of any consultation is that, by and large, the wider public does not

- even know that it is going on. People would have to be very committed to their school and to the interests of their children — as everyone should be; however, these things pass them by. That must be the fault of the consultation organisers for not putting it out widely enough.
295. **The Chairperson:** The Committee Clerk can keep me right here, but there are organisations like the parent teacher associations that interact with parents. I am speaking tonight at the primary principals' AGM —
296. **Mr Lunn:** The Primary School Governors Association.
297. **The Chairperson:** There is an opportunity for us to ask those groups how they engage with parents. Maybe we should look at doing an event specifically for parents and those types of organisations, and not have the unions, or — I am just using that as an example — not have those types of organisations coming to an event similar to what we did in the Long Gallery. We should give that serious consideration.
298. **Mr Rogers:** I agree absolutely. I see there that that particular report talks about extra sessions at Easter and Christmas and whatever else. We should even have enough flexibility whereby another day or afternoon in the week would suit us to fit in another evidence session. I agree wholeheartedly with the idea of a stakeholder event.
299. **The Chairperson:** There is an issue with time in the Senate Chamber, because the Health Committee is looking at moving to another room. So, we can go from 10.00 am until 2.00 pm or later if we need to. You know how it is: if you take briefings from two organisations, it just runs on and on, and could be longer. I do not want to get to the point where we are rushing things through to salve our conscience and saying, "We have had those organisations. We have listened to what they had to say." Everybody should genuinely have an opportunity to quiz them and ask questions of them.
300. **Mr Lunn:** I do not want to be hard on any particular grouping, but we could ask them to present jointly, and I am thinking particularly of the unions. It would surprise me if the message coming from the various teachers' unions was variable, so why not have them all in here together?
301. The other thing is that — and I am not saying that we are not — I hope we are giving this enough priority and urgency. It is very important that we get it right, but it is also very important that we get it finalised. The Social Development Committee is meeting three days a week on the Welfare Reform Bill, and it met over the Halloween break. That is dedication.
302. **Mrs Dobson:** The Agriculture Committee is meeting twice a week.
303. **The Chairperson:** The reason for that is that the Treasury has put a time-bound process in place for the Welfare Reform Bill. That is why the Social Development Committee has to meet more frequently.
304. **Mr Lunn:** I understand that. This is urgent because of the dire straits that the education system is in, the state of the boards and the general apprehension and uncertainty that exists out there about all this. The sooner we can get on with it and finalise it, the better. Last time, we took nine or 10 months to scrutinise the first Bill. That was a total waste of time in the end, and we did not even get to the second Bill, and if we had, you could have been talking 18 months. I am fearful that the new deadline will slip.
305. **The Chairperson:** I do not agree that it was a waste of time. We needed to make sure that we got all the issues aired, and we certainly did.
306. **Mr Lunn:** Yes, there was plenty of air. Hot air, mostly.
307. **The Committee Clerk:** The deadline of 8 April is now agreed by the Committee. We cannot slip, and we will not get another chance. The Speaker will not accept a motion for a further extension. So, 8 April is the drop-dead date.

308. I used to be the Clerk of the Social Development Committee, and we were briefing about that Bill two years ago. As it went through Westminster, the stakeholders were very well informed and were able to come to the Social Development Committee with their amendments drafted. They have just brought back the amendments that they had drafted for the previous Bill. The issue with our stakeholders for this Bill is that they did not see it until it was introduced on 5 October. So, if we had asked them to come to the Committee immediately after the Second Stage, they would not have been able to talk about the Bill. That is why I had to give them until 16 November. Only a few have responded so far. Now, I expect a deluge by Friday. That is why the timing is the way it is. As the Chair rightly said, with the Welfare Reform Bill, there was the parity issue. Whether or not you accept that that concept is valid, the Committee has been working to a particular timescale so that parity is not breached.
309. **Mr Lunn:** Between now and 8 April, at a rough guess, we have about 14 meetings, and we have other business to do.
310. **The Chairperson:** That is why we have said that we need to consider longer meetings, and if we have to, we will have other meetings as well.
311. **Mr Lunn:** We just need to give it the priority it deserves.
312. **The Chairperson:** I do not want us to take our eye off the ball of all that is in this document either, and all the other issues in education. Otherwise, people will say, “You were so wrapped up in one issue that you did not pay any attention to these other things.” So, we have a huge amount of work to do. If you listened to what was in the media the other day, you would think that we did no work in the Assembly. We all know how many hours we put in, and we do not have to put our diaries into the ‘Belfast Telegraph’ to prove how efficient we are. If we did that, we would try to do it in a way that reflected what does happen.
313. **Mr Lunn:** I should perhaps qualify my “total waste of time” remark. It was a waste of time because the Bill did not go ahead. However, it was also groundwork for what we are doing now. Of the discussion we had then, we could have 90% of it again now, or else draw from it and try to shorten it a bit; that is the thing. It will be helpful that all the parties around the table have some sort of commitment to making this thing go through.
314. **Mr Sheehan:** I agree that we should be as thorough as possible in our work on this issue. However, I introduce one note of caution: the research suggests that the longer a meeting goes on, the less efficient it becomes. I ask the Chair in particular to be more direct and to the point on some issues.
315. **The Chairperson:** That has been noted, although whether it will be heeded will be determined by the answers that we get.
316. **Mr Rogers:** At least two members of this Committee, Michaela and myself, have the Public Accounts Committee meeting in the afternoon. So, if you have longer meetings, we will be cut out completely.
317. On Trevor's point, should we be going for a second evidence session every week in the month of January to see where we are?
318. **Mr Craig:** Pat and I have a Policing Board committee meeting this afternoon.
319. **Miss M McIlveen:** We will just have to start at 6.00 am.
320. **The Chairperson:** We will just have to be here early.
321. **Mr Craig:** That is not a problem. If you want me here at 7.00 am, I will be here.
322. **The Chairperson:** I will meet with the Committee Clerk to discuss this. After Friday, we should have an idea of all the responses. On Monday, we will meet to try to compile a detailed proposal for dealing with this, which we will bring to the meeting next week.

323. **Miss M McIlveen:** If you recall, in the previous mandate, we met on a Friday morning. So, there is flexibility there as well.
324. **Mr Kinahan:** I want to take us back to the point I made at the beginning: it is the parents.
325. **The Chairperson:** Yes, we will not lose sight of that. Thank you.

21 November 2012

Members present for all or part of the proceedings:

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

Witnesses:

Mr Chris Stewart *Department of Education*

326. **The Chairperson:** Members, you have a copy of the Committee Clerk's cover note together with the previous briefing information and correspondence from the Department. You will notice that the tabled items include ministerial correspondence that refers to the public appointments process for the Education and Skills Authority (ESA) board, which is to begin with advertisements in local newspapers from 22 November.
327. **Chris, before you make your presentation, I will just ask you this question:** does the Department know the Committee's view on who the other four members should be? The Committee might have decided appoint an Irish-medium representative to the ESA board, but you have scuppered that now. Is this another self-fulfilling prophecy from the Department? Is it a case of, "We will go ahead and do this because we have got the Bill to such a stage"? I have to say that I have a serious concern about this letter from the Minister. It causes my party to question seriously how far we will go in this process. I want to make it very clear that I am not at all happy that we are being told in a letter from the Minister, "The Committee is looking after the Bill. Scrutinise it and do all of that. By the

way, I will go ahead and appoint people to the board."

328. **Mr Chris Stewart (Department of Education):** Chair, let me reassure you on a number of those points. I would not want the Committee to have the impression that the Department was trying to anticipate the will of either the Committee or the Assembly generally; that is absolutely not the case. However, in establishing a public body, it is normal practice for the responsible Department to do the preparatory work for the appointments. The import of the Minister's letter is that the process to prepare for the appointments will be getting under way. Of course, the appointments cannot be made until or unless the Assembly decides that there will be an ESA with a particular form of membership. However, to leave enough time for the process to be completed, it is important that we get that under way now. We recognise that the Committee and the Assembly in general may change the Bill and the membership of the board. If that is the case, we will have engaged in some nugatory work that we will have to redo. Chairman, I want to give you an absolute assurance that no appointment will be made to ESA until or unless the Assembly has decided what the membership will be.
329. **The Chairperson:** Yet we have a paper here, Chris, that tells us that an organisation — ESA — that did not exist reduced its staff complement by 50%.
330. **Mr Stewart:** You have me at a disadvantage there. I am not sure exactly what you are referring to.
331. **The Chairperson:** Annex A in the papers, under the heading "Management of ESA", states:
- "It is anticipated that there will be 35 senior management posts in ESA by comparison with 74 senior managers in January 2007, a reduction of 52 ."*

332. ESA did not exist then.
333. **Mr Stewart:** Sorry, Chair; I am with you now. That is a reduction in what will happen. Those posts are not yet established.
334. **The Chairperson:** Chris, you are very welcome to the Committee.
335. **Mr Stewart:** Thank you, Chair. If members would find it helpful, I will give you a very brief presentation and summarise the overall structure and content of the Bill. Thereafter, I am at the Committee's disposal. We can explore any aspect of the Bill in greater detail if that would be helpful.
336. Following on from what we discussed at the October meeting, I remind members that the Bill comprises 69 articles and eight schedules and is set out in six Parts. Its purpose is to deliver the heads of agreement that were published by the First Minister and deputy First Minister. It is derived from the previous two Education Bills that were considered in the previous mandate. However, in light of the heads of agreement, some of the provisions are very different, such as those on membership. Some of the provisions are very similar to those that went before, such as those on area planning. Others fall somewhere in between, a good example being the provisions on employment, where the core arrangements are very similar, but, as members know, the proposed role for ESA in improving the employment arrangements is very different from what was proposed previously. It is worth reminding the Committee that the Bill builds on and changes the very extensive body of existing education legislation — the 11 primary orders — and really needs to be read along with those orders.
337. I turn now to the content of the Bill. Part 1 is all about organisations and functions. Much of the meat of the Bill is in Part 1. The provisions there will establish ESA. They will set out the employment arrangements that will obtain throughout education. They give ESA its core functions. They will dissolve the existing eight organisations and transfer the assets, liabilities and staff of those organisations to ESA. The functions set out in Part 1 could be broadly divided into four. There are those that will transfer from existing organisations with little or no change, such as providing support for youth services and paying capital grants to schools. There are functions that will transfer but also undergo a fairly major transformation, such as the employment provisions. There are entirely new functions, such as area planning. Finally, there is a range of miscellaneous and ancillary functions that you might expect for any organisation like ESA, such as its power to undertake commercial activities.
338. If Part 1 is all about organisations and functions, Part 2 is all about schools, particularly the management of schools. Part 2 sets out the core provisions on school management, particularly the provisions on schemes of management, which, as members will know, follow very closely the earlier provisions on schemes of employment. In this Part of the Bill, we also set out clearly, for the first time in legislation, a duty on boards of governors to raise standards, which is a very significant provision. We also set out the arrangements for the appointment of governors by ESA. There are some very important provisions on controlled schools. Clause 43 is quite a small clause, and you might miss its importance on a quick read. However, that clause, along with the new definition that it brings and some other changes in the schedule of amendments, fundamentally changes the position of controlled schools in the education system. In essence, they will no longer be controlled in any real sense. Their relationship with ESA will be very similar to that of maintained schools.
339. Part 3 focuses on inspections. The effect of the provisions varies from Department to Department. Members will be aware that the inspectorate inspects on behalf of the Department of Education (DE), the Department for

- Employment and Learning (DEL) and the Department of Culture, Arts and Leisure (DCAL). The DEL powers of inspection are unchanged by the Bill; they are the same as those currently used. By contrast, the DCAL powers are significantly reduced. DCAL is content to rely on a general duty on libraries to be open for inspection, as contained in the Libraries Act (Northern Ireland) 2008. The provisions for DE are the same as those in the previous Education Bill. They represent a modest strengthening and clarification of the current powers. I will say in passing that they are much less robust than the similar powers available to Ofsted.
340. Part 4 deals with the Council for the Curriculum Examinations and Assessment (CCEA). It is really just a re-enactment of the existing provisions for CCEA in the 1998 order. That is necessary because some extensive tidying up of those provisions has been required. That reflects a series of evolutionary small changes in policy but no major policy shifts. The Bill does not, for example, refer to academic or vocational qualifications any longer because those terms are no longer as distinct and separate as they used to be. Instead, we refer to qualifications that are designated either by DE or DEL.
341. Part 5 deals with child protection. This is a very important and significant set of provisions. Their aim is to clarify responsibility throughout the education system to ensure that there is co-operation between all those with a role to play and that there is an effective means of ensuring that responsibilities are discharged. So there are already duties on boards of governors in the existing legislation on child protection. There will be a very clear duty on ESA, similar duties on other education providers, duties to co-operate and a duty on ESA to ensure that all of these arrangements work properly, with ESA having the power to direct boards of governors. That is the only area of the Bill in which it is proposed that ESA be given the power to direct. As the issue of child protection is thought to be so important, it was thought necessary to give ESA strong powers there.
342. Part 6 contains miscellaneous and supplementary provisions, which, as the title implies, is simply a range of provisions that does not really fit anywhere else. It includes a number of things that you would expect to find at the end of any Bill, such as the commencement arrangements and the approval arrangements for subordinate powers, which the Committee will look at later.
343. Last but not least, like most Bills, there is a series of schedules. They set out a range of very technical provisions on matters such as the operation of ESA, the detailed arrangements for the transfer of assets and liabilities and a volume of amendments to and repeals of existing legislation. In fact, the bulk of the Bill is taken up by the schedules, which is necessary to make sure that the Bill fits with the extensive body of existing legislation.
344. **The Chairperson:** Thank you, Chris. I have a couple of questions. First, what progress is being made on the implementation of the heads of agreement? In the debate at Second Stage, the Minister said that there were a number of issues that needed “tidying up” — I think that was the phrase he used.
345. **Mr Stewart:** Chair, you are referring to a number of clauses. There are a couple of clauses that deal with employment and a couple of very similar clauses that deal with schemes of management. Those emerged as the result of political discussions immediately prior — literally in the minutes before — the Executive meeting at which the Bill was considered. They were drafted in a hurry and, to be candid, it shows. There is political recognition that some work is required on those clauses to ensure that they deliver what has been agreed in the heads of agreement. I am not aware that there has been political agreement on what the necessary changes are, and I certainly have not been asked to prepare any amendments yet. As and

- when there is political agreement on the changes to be made, we will do some work to produce amendments that the Minister will want to bring to the Executive in due course.
346. **The Chairperson:** Who is responsible for bringing forward the changes? Is it the political process or the Department? Clearly, there is a framework and the political structures have said what they believe needs to be in place. Does the Department, at a stage, say what can and cannot be done? Is that not where we are now rather than seeking further clarification from the political processes? In a sense, they have spoken. They said what their agreement is and what they believe needs to be reflected in the Bill. The issue now rests with the Department.
347. **Mr Stewart:** I understand that there are to be further political discussions on what changes might be made. The vehicle for making those changes could take a number of forms. Individual Committee members could table amendments at Consideration Stage or the Committee may wish to propose amendments collectively. As I said, the most likely vehicle is that the Minister will wish to bring some amendments to the Executive for agreement there. He would then table those at Consideration Stage.
348. **The Chairperson:** In the Minister's letter of 19 November, what is the Department's definition of "representative of the community"? How does it interpret that? Are we talking about the education community or the political community? What community is defined by that? Is it Northern Ireland plc?
349. **Mr Stewart:** There is no hard and fast definition, but it would be the broader community that you referred to — the community of Northern Ireland. That formulation is quite frequently used in legislation, but, to my knowledge, it is not formally defined anywhere. It is one of those concepts that you can recognise more in the breach than in the observance. If, for example, all four community members were either all male or all female, clearly the membership would not be representative of the community. If they all came from one particular community background or one particular geographical area in Northern Ireland, it is unlikely that the membership would satisfy that test. We recognise that with the total of that part of the membership being as low as four, it is actually quite difficult to get the degree of representation that would satisfy all stakeholders.
350. **The Chairperson:** It will be very interesting to see what happens given the track record of the Department in public appointments.
351. An issue that came up in previous discussions about the Northern Ireland literacy assessment and the Northern Ireland numeracy assessment and all that has been going on with computer-based assessment was the disconnect between schools and the Department, and the Department not listening to what schools were saying. What assessment, consultation, conversations or contact has the Department had with schools on the purpose of the Bill? According to the Department, there are:
- "many excellent schools, but also many that are educationally, financially, or physically not viable or sustainable".*
352. It also refers to:
- "system-wide, a level of performance that is falling behind".*
353. How does the Department propose to ask schools about this legislation given that they will be the ones on which it will directly impact?
354. **Mr Stewart:** Chair, there has not been a specific consultation process with schools on the drafting of this Bill, and there is not one planned. The timescale set out in the heads of agreement and the Executive agreement simply did not allow for that. However, the Executive were able to take that decision, mindful of the very extensive consultation in the past, both in the development of the underlying policy reflected in the Bill and

- in the drafting of the previous Bills, large sections of which, as I said, have been carried forward into the current Bill.
355. **The Chairperson:** How do you see that being done? If you take the area plans, there was a decision made by the boards, to a lesser or greater degree, depending on the board. They presented their ideas for the area plans and what they thought should or could happen in different areas. They put those ideas out, and there have been 47,000 responses, the greatest number of which probably came from my board area, the North Eastern Education and Library Board. What mechanism would be used to test the views of the public on the Bill given that we are at Committee Stage? Is there still a mechanism available to the Executive to put the Bill out to public consultation?
356. **Mr Stewart:** Technically, the answer is yes. If the Executive decided that, for example, between the end of Committee Stage and the beginning of Consideration Stage, they wished to allow for a period of public consultation, that could be achieved. That would, of course, have very serious implications for the timescale set out in the Programme for Government.
357. **The Chairperson:** It would not be the first deadline that we missed.
358. **Mr Stewart:** Indeed not.
359. **The Chairperson:** So that would not really be a big issue. It could be done.
360. **Mr Stewart:** Yes, it could be done. You will recall from the previous Bill that there was a rather long gap between the end of Committee Stage and what we had hoped would be Consideration Stage. An election came along before the Consideration Stage, and the Bill fell.
361. **The Chairperson:** Chris, will you clarify for me how many organisations will represent the maintained sector? I get confused. The Council for Catholic Maintained Schools (CCMS) will disappear, and another body, the commission, has been set up. My understanding is that the commission receives no funding from the Department. Your paper refers to a new body, and this is the first time that I have seen it mentioned, called the Trustee Support Body (TSB). So we are bringing back the TSB — many in Northern Ireland would be glad of that if it was a banking reference. Will that be the body? There is an inventive way in which that group of people normally operate. Will the TSB be made up of the same people who are in the commission?
362. **Mr Stewart:** No, that is unlikely. It is probably best to think of the commission, and this is not the perfect comparison, as analogous to the Transferors' Representative Council. The intention is that the Trustee Support Body will be the sectoral body for Catholic education. Your initial question asked how many bodies there will be for the maintained sector. Maintained is, of course, a management type. We all, including myself, quite often use it as a euphemism for the Catholic sector, but there is more than one maintained sector. There will be a sectoral body for the maintained and voluntary grammar Catholic sector, and there will be a sectoral body for the Irish-medium sector, because Irish-medium schools are maintained schools. So, the literal answer to your question is two, but the intention is that the trustee support body will be a single recognised sectoral body for Catholic schools.
363. **The Chairperson:** What consideration could be given to a secondary body? One of the issues that a number of people raised about voluntary grammars concerned whether the Governing Bodies Association (GBA), for example, would be recognised as a sectoral body for that organisation. We should bear in mind that the GBA does not always speak unanimously for the voluntary grammar sector, but it is an organisation that exists. What is the possibility of the Department's considering making it another body that is aligned with those that are set out in your briefing paper to us?

364. **Mr Stewart:** It is possible, Chairman. That would be a policy decision for the Minister. The Bill does not specify the number of sectoral bodies or the identity of any of the sectoral bodies; it simply makes provision for them to be recognised. Therefore, it is technically open for any body to approach the Department and for the Department to decide to recognise it as a sectoral body. As I said, that is ultimately a policy decision for the Minister. To my recollection, the heads of agreement do not mention a sectoral body for the voluntary grammar sector.
365. **The Chairperson:** The Bill could be amended to reflect that.
366. **Mr Stewart:** The Bill could be amended in any number of ways. If the Assembly decided to do that, it would then be possible to specify the sectoral bodies.
367. **Mr Kinahan:** I have a few points to raise. If I may, I will raise two or three now and then let everyone else and the Chair come back in. If, at the end, there are one or two points that someone else has not covered, I will come back in.
368. The first point is on the advertising of posts. Will that be done in a broad enough way? We just touched on voluntary grammars. If another body were added to the Bill, you would have done the interview already. It would be sensible to do it all beforehand, but if you do it in an open enough way, they could be included. I am sure that the intention of some of us is to try to get that in the Bill. Therefore, will the advertising be done in such a way that means that they will be included?
369. The next point is linked to that. If that is not in the Bill, who is intended to speak for the voluntary grammars in the controlled sector? You very clearly said that CCMS, or the new body that replaces it, will speak for the Catholic voluntary grammars. We all know that a gap exists. So, who will speak for those who are in that gap?
370. You said that child protection is the only area for which the Bill would increase in powers and that that is the only place that ESA would be able to direct governance. However, if you read the Bill in a different way and in different places, you will see that there are many other routes into how governance is directed. I would like it confirmed that that is the only matter on which the Bill will give ESA powers to direct governance. The others, I assume, would be the Department. When talking of powers, you also touched on the fact that ESA will be similar to Ofsted. However, as I understand it, Ofsted is independent. That is what we do not have here.
371. I will stop there, but I have one or two other points for later.
372. **Mr Stewart:** On the first part of your question, I do not think that there is any intention at this stage to advertise or call for applications. I think that we are close enough to all the major stakeholders to know who would be interested in playing the role of sectoral body. We could be wrong, and other groupings could come forward, but I think that we are sufficiently close to stakeholders and sufficiently aware of their views for the Minister to make an informed decision about which sectoral bodies he wishes to recognise. I do not think that the GBA and others will be shy of making representations on that score if they wish to.
373. You asked about controlled grammar schools; grammar schools in the controlled sector — I think that that is what you meant. The aim is that if the controlled sectoral body is to play the role that everyone thinks that it needs to play and to be effective, it needs to be able to represent all the schools in that sector and to demonstrate that it does so. That includes the controlled grammar schools. We recognise, and we have said from the outset, that that is a very difficult challenge for the working group and, in due course, for the body. It is a very large and very diverse sector. It is a sector that simply does not have the tradition of operating or having someone operate on its behalf in this particular way. That is a real challenge. Although we do not regard any school or any group of schools in the controlled

- sector as any more important than any other group, the controlled grammars have an important and leading role to play in that sector. We certainly want them to have the trust and confidence in the sectoral body's ability to speak on their behalf, just as it could for all the other schools in that sector.
374. Forgive me if the presentation was maybe not as clear as it might have been on ESA's powers. You are quite right that the clause that I referred to is not the only one that says that ESA will interface with boards of governors. However, it is the only instance where we propose to give ESA the very strong power to direct. Members from the Committee's previous incarnation will have heard me speak many times about article 101 of the 1986 order, which covers the Department's power to direct. It is very powerful. It allows us to direct schools and educational organisations to do something, to stop doing something, to do something in a particular way or to not do it in a particular way. Those directions are enforceable in the High Court, so it is a very significant power. It is not one that we would use lightly, and it is certainly not one that we would hand out lightly to ESA. So, child protection is the only area where we propose giving ESA a power of the strength of the power to direct.
375. Finally, you asked about Ofsted's powers and independence. If you compare the powers that are proposed for the inspectorate for the inspection of schools with Ofsted's, you will see that our powers are very modest indeed. For example, Ofsted has the legal right of entry, which the police could enforce on schools. We are not proposing that for ESA. Ofsted's powers are very much more robust indeed. If I recall the legislation correctly, it is a criminal offence in England not to co-operate with an inspection. Again, we are not proposing that here. You are quite right to say that Ofsted is independent and that the position of the inspectorate here is different.
376. Chair, if I may, let me describe that very carefully to ensure that I do not mislead members in any way on this. The starting point is — this is extremely important — that individual inspectors and teams of inspectors inspect independently. They decide which schools to inspect, when to inspect them, what they will inspect when they are there, and they give their professional judgement in their report, independently of me or the Minister or anyone else. In rightly emphasising that operational autonomy of inspectors, we sometimes risk confusing the position and talking about the inspectorate as though it were an independent body. It is not. It is part of the Department of Education, and the existing education provisions set that out very clearly. It is article 102 of the 1986 order, and the heading of that article talks about inspections by the Department. So, the Education and Training Inspectorate is the Department; it is the Department inspecting. Successive Ministers have recognised and upheld the importance, as I say, of individual inspectors' being absolutely able to exercise their professional judgement without interference from anywhere.
377. **Mr Kinahan:** If you are advertising, can we guarantee that the scope of the advertisement for people to call back in will allow voluntary grammars, meaning a body such as the GBA, to apply and that it will not be written in such a way to count them out?
378. **Mr Stewart:** Perhaps the easiest way to give you assurance on that is to say that, on foot of today's meeting, I will convey the view that you expressed back to the Minister.
379. **The Chairperson:** Chris, I want you to clarify something for me before we go a bit further. We have had correspondence from the departmental Assembly liaison officer about sectoral support bodies. The correspondence states:
- "The Heads of Agreement of 16 November, 2011 and Policy Memorandum of 14 December, 2011 have established that there shall be a sectoral support body for each of the following sectors: Catholic schools, Controlled schools, Integrated schools, and Irish-medium schools."*

380. There is no mention of that in the heads of agreement. The heads of agreement are very clear:
- “Sectoral support bodies will be established for the controlled and maintained sector.”*
381. It does not mention the others.
382. **Mr Stewart:** The other two already exist.
383. **The Chairperson:** Yes, but so does the GBA.
384. **Mr Stewart:** It does, but it is not funded by the Department for anything that is akin to a sectoral support role.
385. **The Chairperson:** I wanted to clarify that because it was not raised in the heads of agreement.
386. **Mr Stewart:** Chair, you are absolutely right. Again, apologies if the letter is slightly misleading about that. You are quite right to say that the heads of agreement mentioned only two sectoral bodies: one for the controlled sector and one for the Catholic sector. The policy memorandum that the Executive agreed would have referred to all four.
387. **Mr Lunn:** Thanks again, Chris. I want to run you over ESA’s membership. From memory, the previous time, we started off with seven members, and there was a whole hue and cry about that. I think that we finished up with 13 as a proposition. The brief states that the membership will include eight political representatives. The previous time, that meant local councillors. Does it still mean local councillors?
388. **Mr Stewart:** There is no restriction. The political members could be anyone who the party nominating officers choose, so they could be MLAs or councillors. They could be holders of any political office or of none. No limitation is drawn in the Bill.
389. **Mr Lunn:** I am glad to see that, but it is a bit of an about-face. The previous time, the Minister was set against MLAs being able to join the ESA board for what I would have thought were fairly obvious reasons.
390. **Mr Stewart:** The provisions have certainly moved a very long way. You may recall, Trevor, as will Michelle, that the original proposal was for a very small board of seven or eight members. You might call that a technocratic board — members might call it a bureaucratic board — with no political representation whatsoever. We then moved to having some political representation and then to majority political representation in the form of district councillors. We now have the very different proposals that are captured in the Bill, all of which have come from the political process and from politicians telling officials what should be in the Bill.
391. **Mr Lunn:** It is really nice that the Department listens. We are now up to a membership of 20. I know that it is difficult to compartmentalise all the sectors. The political representatives, trustee members and transferor members will probably broadly cover most of the sectors, but others probably share my concern about the four “other” members of the board. I am sure that the Northern Ireland Council for Integrated Education will be pleased to be a recognised sectoral body with a bit of funding, but it would much rather have a seat on the board. I am sure that that is also the case with the Irish-medium sector. They are recognised sectors in the education system that stand apart. It is not the same as voluntary grammar schools, which cross over sectors. Eventually, there will be an argument about this at Consideration Stage. What is behind the Minister’s thinking that those two important sectors will have to rely on being one of four “other” members who are supposed to be representative of the whole community?
392. **Mr Stewart:** Trevor, forgive me if the answer that I give you sounds evasive; it is not intended to be. This is purely a policy decision. The Minister and the Executive took that decision about the sectors that should be represented as of right on the ESA board and those that should not. I am afraid that there is nothing further that I can say to add to that or to illustrate why that particular

- view was taken. It is the view and the conclusion that the Executive came to.
393. **Mr Lunn:** I am sure that, since he listened about the size of the board, he will have a completely open mind about its make-up.
394. I am not being facetious here. You said that article 101 is an extremely powerful tool. Theoretically, could it be used to direct a school to stop academic testing?
395. **Mr Stewart:** No is the short answer, because that would be unlawful. The underpinning restriction in article 101 is that we cannot use it to break the law. The law in the existing legislation — indeed, it is replicated in the Bill — very clearly states that it is lawful for boards of governors of schools to employ academic selection in their post-primary selection criteria. Until it is the Assembly's will to change that, that will remain lawful and article 101 cannot be used against it.
396. **Mr Lunn:** Could it be changed at Consideration Stage?
397. **Mr Stewart:** The particular provisions in the Bill could be changed at Consideration Stage. If you are asking whether someone could table an amendment to insert a new provision in the Bill to change the general position, in law, on academic selection, I can tell you that we would need advice from the Speaker. However, I expect that he would rule it out as being beyond the core principles of the Bill. So, the Assembly could do it, but it would have to be in a different piece of legislation.
398. **Mr Lunn:** It is a pretty academic argument anyway. Someone could throw in a petition of concern, and that would be the end of it.
399. **The Chairperson:** It is an awful thing having all these restrictions and political processes.
400. Let me just clarify something Chris. The composition of the board was not an issue of a policy decision but one that reflected the transferors' legal position. That was the whole issue that we had in the previous Committee. ESA's membership is a reflection, on a smaller scale, of the formula that is used in the composition of education and library boards. That was the reason for it; it was not for anything other than that. How many times were we told what we could and could not do? We received different legal opinions and got to the point where we were told that it could not be done. You will remember all the pain that there was going through that.
401. **Mr Stewart:** Yes, Chair. I bear the scars from that, and I always will. You are absolutely right. The composition of education and library boards is set out in the 1986 order. That, of course, predates the existence of coherent integrated and Irish-medium sectors in the way that we know them now.
402. You are absolutely right. Many times I came before the Committee and advised what the lawyers told us that we could and could not do. Perhaps it is best if I sum that up by saying that the legal advice evolved in a helpful direction and allowed us to give effect to the Executive's policy desire on membership. The Executive have not, at any stage, indicated that they wish to reserve seats on ESA as of right for any sector other than the controlled sector and the Catholic sector.
403. **The Chairperson:** We have received a newsletter and update from the controlled sector body. What is the Department's view of how that work is progressing? That sector has not had the advantage of the structural position or the financial assistance that CCMS has had since 1989.
404. **Mr Stewart:** I am not directly involved in that work, and, perhaps, at a future meeting, my colleague Paul Price might come along to brief you on that in more detail. My understanding is that that work is progressing well, but that it is still at an early stage. The working group has met and has set down some initial thoughts on what the body's scope and focus might be. We have seen those, and, by and large, they

- look very positive. It is clear that the working group is taking its role very seriously and that it is working hard to bring forward a credible proposal for an effective body that would have a real focus on raising standards in the controlled sector. That is very welcome.
405. There is a long way to go. As I said in response to Danny's earlier question, it is one thing to get the technical aspects of a body in place; anyone can set down articles of association or a memorandum of understanding. However, the real challenge will be for those involved to build the trust and confidence that they need across the controlled sector so that the principals and boards of governors in every controlled school are happy to say that that body speaks for them and that they hope that the Department is listening because that body speaks for them. As we said before, we stand ready to give the group any assistance that it requires, including financial, to get that done.
406. **The Chairperson:** Obviously, the approach that the Department has taken in regard to the four members of the board is slightly different in that the letter that the Minister sent us today says that it is going to go ahead and advertise and then establish the board. However, the board for the controlled sector body was only established in shadow form, and my understanding is that "the body" will not be up and running until the Bill is passed.
407. **Mr Stewart:** That is not necessarily the case, Chair, and we are certainly not placing any restriction on it in that regard. We do not create or establish that non-statutory body through any sort of formal process. The Department is, at best, the midwife for the controlled sector body and will help it come into the world. The earlier it comes into the world, the better. The earlier it starts the process of building trust and confidence across that very large sector, the better the outcome will be for all.
408. **The Chairperson:** It is proposed to give ESA powers over area planning. An area plan is a document that contains a map of the area to which it applies. If you look at the managerial proposals that the Department has sent us, which outline the number of directors that Gavin Boyd is going to have under him and the number of subset managers that are going to be under them, you will see that ESA will end up having more staff than the five education and library boards. I will set that aside and come back to it at some stage.
409. Who will define an area plan? We have five boards, and we have plans out at the minute. The boards break into geographical areas, but when you have one organisation responsible for area-planning, will the area plans be coterminous with the new electoral wards proposed under the review of public administration? If so, we will have 11 area-plan areas. How will we marry those with what we are doing with the area plans, which are cross-boundary and cross-council area and, in some cases, cross-board?
410. **Mr Stewart:** The short answer is that that is all up for grabs. The current area-planning exercise is based on the board areas as a matter of pragmatics. That is the easiest way to approach that exercise in the time available for its completion while recognising that, at present, we still have five separate education and library boards.
411. The Bill is deliberately not specific about areas. It will be for ESA to propose an area plan for a particular area, however defined, but, ultimately, the decision would be made by the Minister because it is the Minister who signs off on area plans. The reason for not specifying it in the Bill was that, genuinely, we wanted to leave space to look ahead to see the best and most effective way of doing area planning.
412. You have drawn attention to the tensions that there are between a plan for the Belfast area and ones for, say, the South Eastern Board area and the North Eastern Board area. However, we know, particularly at post-primary level, that significant numbers of pupils who live

outside the Belfast Board area travel into it to receive their education. So, there is a difficulty if you draw the area plan around that.

413. On the other hand, given the importance of ensuring community buy-in and democratic accountability for area plans, we have to give some cognisance to current and future geopolitical boundaries. However, there is also scope for a very sophisticated approach to area planning, analogous to what are commonly referred to as travel-to-work areas, which my colleagues in the Department of Enterprise, Trade and Investment would be very familiar with. So, the number-crunchers could do very sophisticated modelling on travel-to-education areas. However, those areas may not match geopolitical boundaries, so you may have a difficulty or a mismatch between a plan that is technically very rational but does not fit with local democratic accountability. So, the Bill is open. It allows us to do it in any or all of those ways depending on what is thought to be best in order to meet the needs of education.
414. **The Chairperson:** Or, it may be that the argument used by the school is that it is the only provider of that type in the area. In my constituency, people from Larne come to an integrated post-primary school in Ballymena because they say that it is the nearest post-primary provision that they can access. The same thing will apply.
415. **Mr Stewart:** That is right, and I think that —
416. **The Chairperson:** So, a statutory duty will be placed on the Department to facilitate that particular sector.
417. **Mr Stewart:** That is a very significant factor, Chair; you are absolutely right. We are already saying in the current area-planning exercise that you need to consider a very different range of factors. For example, there are different factors to consider when you are looking at primary provision and post-primary provision. Different sectors and different management types have other factors as well.
418. The Irish-medium sector would, I think, rightly point out that the catchment areas for some of its schools tend to be much larger than those in other sectors simply because there are fewer of them. So, in order to access one, some pupils and parents have to travel greater distances. The same might be true in the integrated sector, to a slightly lesser extent. In some of the other sectors, in which the school types are more prevalent, the same sorts of issues simply do not emerge. Again, this might sound as though we are ducking the issue, but that is not the case.
419. Taking all those things on board, we thought that it was important to have a set of provisions on area planning that are flexible enough to allow ESA to address the very difficult task of picking through all those issues and coming up with a coherent and effective approach to area planning. There is no easy solution or easy and obvious approach to area planning. It will require some very careful thought, building on the extensive work that has already been done on the current first round of area planning. The Minister has always said that area planning is a process, not a single event. It is a process that will evolve in coming years.
420. **The Chairperson:** I notice that the Bill states that ESA can give direction only in relation to child protection, but the power of direction is also given to the Department. As regards area planning, it states:
“ESA may, and shall if the Department so directs”.
421. So, we set up this body and tell it, “By the way, you are looking after area planning. However, if we want, we can direct you to prepare a plan for an area.” What is the point? What

- circumstances do you envisage in which the Department would want to meddle in area planning?
422. **Mr Stewart:** I would not describe the Department's role as meddling in any regard.
423. **The Chairperson:** That was a biased comment from me. I am happy to see it as meddling.
424. **Mr Stewart:** Constructive input may be another way of describing it. *[Laughter.]* My point is not intended to be facetious. It is not meddling because, ultimately, the decisions on area plans and on individual development proposals will continue to rest, as they do today, with the Minister of the day. So, in that sense, it is not meddling. It is ensuring that legislation gives the Minister of the day the power to, if necessary, enforce his or her decisions on ESA, which is, after all, as the heads of agreement said, a delivery body. It is for the Minister of the day to set the policy.
425. **Mr Lunn:** My point is loosely around the area plan and the travel-to-school aspect of it. I recently dealt with a situation in which a mother wanted to send her daughter to a particular maintained school, which is only a mile and a half from her home but, in the end, she had to either send her to a different maintained school, which is about 10 miles away, or to the local controlled school. The reason why she could not go to the first school was because it was in a different parish. Is there anything in the Bill that might prohibit Catholic schools from giving priority to people who live in the same parish as the school, as they seem to do at the moment?
426. **Mr Stewart:** The short answer is that there is nothing in the Bill to prevent that, Trevor. However, I should give the caveat that I do not consider myself to be an expert on the arrangements and provisions around admissions criteria. Again, if there is a detailed question there, I can take it back to colleagues in the Department and bring you a more authoritative answer. I just do not know in detail how those particular arrangements work.
427. **Mr Lunn:** Well, neither do I, obviously. However, in that instance, I was quite surprised. The child could almost have walked to the school, but it was across a boundary.
428. **Mr Stewart:** The answer to your question is that there is nothing in the Bill that would affect that.
429. **Mr Kinahan:** Sorry, Chris. I have more questions. I would like clarification on the tribunal, which we have not really touched upon today. Page 6 states:
"Existing legislation already contains provision for dispute resolution".
430. It states, however, that it is not powerful enough. Have you had any scope or idea about the guidelines or regulations that will govern tribunals and how broad they will be? Where will that lie within existing legislation and/or the power of the Assembly? I would normally expect that sort of power to lie with the Assembly rather than with the First Minister and the deputy First Minister. That is one question: can you clarify how that all fits together?
431. My other question relates to minor issues. We never seem to touch on them. Can you give a little bit of clarification on the future of youth provision in line with Priorities for Youth? I know that we will all be fighting every other corner but slightly forgetting that it exists. I would also like a little bit more information on what is meant by "commercial activity".
432. **Mr Stewart:** Going back to the first of those questions, Danny, as you know, the Bill provides for the regulations on the tribunal to be made by the Office of the First Minister and deputy First Minister (OFMDFM) and not by the Department of Education. We have had some initial discussions with colleagues in OFMDFM to explore with them what the scope of the regulations, the form of the tribunal, and the options for that might be. I think that it is fair to say that it has not got very far yet. One of the

- major impediments to that is the matter that the Chair referred to earlier. The clauses in the Bill that are recognised as needing a bit of work are actually very significant with regard to that. The intention is, in some shape or form, to give boards of governors recourse to that tribunal. However, until those clauses are amended and their effect is clear, it is very difficult — indeed, well nigh impossible — for colleagues in OFMDFM to make any progress on the draft regulations that would establish the tribunal. That is something that, the longer it goes on, will be of growing concern. The earlier that we make progress on that, the better.
433. With regard to your point about, perhaps, expecting the Assembly to play a particular role, rather than the First Minister and the deputy First Minister, again, I am afraid that I must give the official's cop-out answer: that is a political decision, which is made by the Executive and the parties. It is not one for me.
434. With regard to youth, let me give you what I hope is a much more helpful answer, which is that I think that there is a good-news story here. The provisions in the Bill place youth services on a much firmer footing than ever. Wherever possible, we have tried to construct provisions on youth services in a similar way to the provisions on schools, recognising that the Youth Service plays an incredibly important role alongside formal education, particularly for reaching those children and young people who are at risk of falling outside or being excluded from the formal education system. That is why we thought that it was important that, while not taking away from the essentially voluntary nature of much of the youth sector — that is not to decry the contribution that statutory youth services make, but the contribution of the inherent flexibility and informal nature of the youth sector is a very precious thing with which we should not interfere — at the same time, we need to give it its place in the sun. That is what we have tried to do in the Bill,
- particularly with some of the earlier provisions in clause 2.
435. **Mr Kinahan:** I asked about commercial activity.
436. **Mr Stewart:** Sorry. If I may, Chair, I would like to come back on that. The short answer is that there is nothing to fear in that clause. As you will have seen, it is heavily caveated. ESA would not have a free hand. If the Department felt that it was proposing to do something commercially that would interfere with its core functions, we could stop it from so doing. It is actually quite a common provision that you would see inserted in most Bills. For example, there is a similar power for the Libraries Authority in the Libraries Act. I am not sure whether it has ever been extensively used. We do not have anything specific in mind at present. I do not think that Gavin does either with regard to what ESA might do. The provision might have been more significant had the CCEA functions gone to ESA, when there might have been more scope for commercial exploitation of some of the things that ESA would do, but which, in a sense, CCEA will continue to do.
437. **Mr Kinahan:** Thank you.
438. **The Chairperson:** Thanks, Chris. I have no doubt that when we start this, you will be back on numerous occasions.
439. **Mr Stewart:** You will be sick of the sight of me, Chair.
440. **The Chairperson:** Thank you very much.

28 November 2012

Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
 Mr Danny Kinahan (Deputy Chairperson)
 Mrs Brenda Hale
 Mr Chris Hazzard
 Mr Trevor Lunn
 Miss Michelle McIlveen
 Mr Sean Rogers
 Mr Pat Sheehan

Witnesses:

Mr Gerry Murphy *Irish National Teachers' Organisation*
 Mr John Devlin *National Association of Schoolmasters Union of Women Teachers*

441. **The Chairperson:** I welcome to the Committee Mr John Devlin from the National Association of Schoolmasters Union of Women Teachers (NASUWT) and Mr Gerry Murphy from the Irish National Teachers' Organisation (INTO). Thank you for your submissions. I invite you to make your presentation, after which members will have the opportunity to ask questions.
442. **Mr Gerry Murphy (Irish National Teachers' Organisation):** Thank you very much, Mr Chairman, for your welcome. We are very appreciative of the opportunity to address the Committee on this important matter.
443. The Northern Ireland Teachers' Council (NITC) is the recognised body representing the teaching profession and is made up of the Association of Teachers and Lecturers (ATL), the Irish National Teachers' Organisation, the National Association of Schoolmasters Union of Women Teachers and the National Association of Head Teachers (NAHT).
444. We would like to make a brief introductory statement, if that is acceptable, and then we are happy to engage directly with you and provide any clarification that you may wish to seek.
445. The NITC sees the proposed Education Bill as the proverbial curate's egg. We welcome, in principle, the establishment of the Education and Skills Authority (ESA), described as a single employing authority in clause 3(1). Our hope is that when ESA comes into being, we may see a greater continuity returned to the administrative arm of the educational establishment and significant savings accrued from the removal of unnecessary duplication across the system. We anticipate those administrative savings becoming available to directly support teachers and children in classrooms.
446. The board of ESA, as described in the Bill, does not include any representation as of right for the workforce, be they teachers or our colleagues in the ancillary and auxiliary support staff. The NITC believes that this is a missed opportunity, as representation at board level of those employed in the education sector would, we contend, assist greatly with the smooth functioning of the system as a whole.
447. NITC is concerned that elsewhere in the Bill — in clause 12(1) to 12(5) and schedule 2 respectively — non-teaching staff and boards of governors will have the power to employ teachers, terminate their employment and discipline them. This is contradictory and will, no doubt, lead to challenges. The provision of employment schemes and management schemes, potentially from 1,200-plus schools, will create a potential patchwork of provision in these areas and will serve only to undermine [*Inaudible.*] in application and interpretation.
448. NITC suggests that, together with the ESA implementation team, we construct model schemes of employment and management. This will have the effect of reducing potential conflict and mean that any variance from those schemes

on the part of the submitting authority would have to be justified. These documents — that is, the schemes — should also be public documents and published by the submitting authorities. We are further concerned to protect the central negotiating machinery. The submission by various sectors or schools of individual schemes presents a threat to the centralised negotiating machinery. NITC views this as a recipe for chaos and something to be avoided.

449. The Bill brings about a significant number of substantive changes in the role and responsibility of boards of governors. We see these bodies, populated as they are by volunteers, having additional responsibilities thrust upon them — I refer to clause 38(1) — and, consequentially, being subject to greater levels of public scrutiny and accountability — I refer to clauses 46(3) and 46(4). NITC is most concerned that citizens will become unwilling to put themselves forward for these voluntary positions in light of the proposed changes. From a trade union perspective, NITC is anxious that the good relationships between governors and teachers should be maintained in the interests of both parties, in particular the children. However, the imposition on governors of an obligation to drive up levels of attainment places them in potential conflict with the education professionals — the teachers.
450. Other issues arise in this area of the Bill, such as the introduction of an ethos qualification at clause 39(7)(a) and (b). NITC sees this as reducing further the potential pool from which to recruit governors initially and reinforcing a silo mentality. However, if the legislation is to proceed as written, we feel that the trade unions should be represented on boards of governors as of right.
451. The Bill allows for the establishment of a tribunal by the Office of the First Minister and deputy First Minister (OFMDFM) as a means to resolve disputes that may arise between boards of governors and ESA. NITC is of the view that access to the tribunals should be open to third parties, namely, trade

unions. It is likely that the majority of disputes arising between governors and ESA will be in respect of the schemes of management and employment, both of which impact directly on our members. Additionally, the Bill does not make clear whether the decisions reached at the tribunal are binding. If the decisions are not binding, what is to prevent the parties to a dispute seeking resolution elsewhere? The area that deals with tribunals, like much of the Bill, lacks clarity.

452. The Bill enhances the functions and power of the inspectorate — clauses 44 to 48. NITC believes that the inspectorate already has adequate powers to carry out the Department of Education's bidding. The Bill also focuses the majority of new powers on inspection of teachers and governors. Inspections to be carried out in areas controlled by the Department for Employment and Learning (DEL) remain unchanged in the Bill. In areas under the control of the Department of Culture, Arts and Leisure, inspection powers are significantly reduced. The Bill does not indicate who will pass judgement on the effectiveness of the inspectorate in supporting the work of teachers and governors to raise standards. This omission removes any pretence of partnership working and fundamentally changes the dynamic in the relationship between teachers, governors and the inspectorate.
453. Area planning will become a statutory duty for ESA under the provisions of the Bill. This should, in NITC's view, lead to a more strategic approach across the entire school estate than has been the case to date. We also feel that the planning process would benefit if the trade unions representing those employed in the sector were to be included in the central planning group.
454. Finally, NITC is disappointed that the Bill makes provision for the funding of sectoral bodies. We have long held the view that such bodies should not be funded directly from the public purse and that schools should opt in to a sectoral body if they wish. Funding for

- the body would be by means of annual subscription paid for by the school.
455. Mr Chairman, thanks for your attention and that of the Committee. John and I will do our best to answer any questions that you may have.
456. **The Chairperson:** John, do you want to make any further comments?
457. **Mr John Devlin (National Association of Schoolmasters Union of Women Teachers):** No. I will take questions from members.
458. **The Chairperson:** Thank you. I appreciate your making a submission and taking time to come to see us today. Obviously, for us, this commences a lengthy process of ensuring that we cover in an open and transparent way the issues and concerns raised by a variety of organisations. It is important that we were able to have early in this process the opportunity to listen to union representatives, who are the voice of their members. It is they, the teachers, who will be affected.
459. We have received submissions from other unions, and it is difficult to be conclusive about the agreed position of the various unions on the key issues. I would appreciate your view on that. I take it that there is a general agreement that having one organisation, ESA, is desirable, as opposed to the situation now. As the Bill has 69 clauses and eight schedules, there will be some variation in the emphasis of one union compared with another. What is your general sense of the level of unanimity on the key issues that need to be addressed and which have a particular bearing on your members?
460. **Mr Murphy:** I have addressed what I consider to be the key issues for the trade unions, but the fundamental issue for us is this: who is the actual employer of teachers? The provision of individual schemes of management and employment are covered in clauses 3 to 9. It seems to us that the Bill is unclear on individual schools carrying out employment functions separate from the employing authority or employer.
- To us, the potential for conflict and variance in the application of existing employment law and existing procedures seems very great. We would prefer there to be a central employment scheme and a central scheme of management. That appears to us to be almost common sense in so far as it removes any potential for misunderstanding that could lead to conflict and dispute between our members and the employing authority.
461. **The Chairperson:** At this point, Gerry, what is your assessment of the current employment arrangements? Another union has said that clause 3 should provide that an opt-out be available to, for example, voluntary schools.
462. **Mr Devlin:** We look at this as a whole. An opt-out would totally weaken the whole procedure. Either everybody is under the tent, in which case things can be organised and there are terms and conditions common to all teachers throughout the Province, or we open the door to suddenly having differences occurring in different parts of the system. In some ways, when we read through the Bill, we see that, certainly in the voluntary sector, there is an element of freedom and control. Throughout the Bill, the door is opened to every school taking that route. The term “academisation” jumped out at us. Effectively, the Bill creates a system akin to the academies in England. People may have different views on that. Maybe that is a good thing, but it is certainly not something that we have had within our system here.
463. We also have a question on opting out. Would an institution opt out but still receive the full benefits as everyone else, or would their funding be reduced? If opting out reduced their funding, they may have to charge fees, and a fee-paying type of education would suddenly appear on our doorstep. We have always supported the idea of one central body managing education in Northern Ireland so that we can avoid the situation that exists now, when we seem to be negotiating with up to nine different types of employer. There is a lot of

- duplication, and this is an opportunity to simplify what we have now.
464. **The Chairperson:** John, I am not being facetious here — sometimes people accuse me of that — but you are arguing that there is merit in having one organisation to streamline employment, and the logic of that argument is that we should not have five or six union organisations representing a variety of views and opinions. I was once berated at a NASUWT conference. A gentleman from the floor tore me apart, accusing politicians of not being able to make decisions, not being united on anything and being a shambles. I said that, respectfully, we have five or six unions. I have no difficulty with that. They do not always present a unified position. That is why I asked the question at the start. Part of the reason for that is probably because difference and variety can, sometimes, be good.
465. Some 99.9% of the money that goes to our schools, irrespective of sector, comes from the state. It comes from the public purse. We have clear legal advice that clause 3 makes ESA the employer — full stop. That is it, there is no ambiguity. However, for some time, certain schools have believed that they have a degree of autonomy or independence — call it what you will — and they see the merit, value and worth of that. There is a worry that, somehow, a centralised arrangement will restrict their ability to do what they have done, which, they will argue, has given them good outcomes. Other schools across a variety of sectors are envious of the way in which a decision can be made on, for example, the employment of a teacher. In some sectors, that can be a very straightforward, simple process. In others, however, the employment of a teacher is done via the boards — there are some such schools in my constituency — and the way in which the process goes on and on, meaning that an appointment cannot be made quickly, is a downright disgrace.
466. How do we get an agreed position on that? Is it autonomy for all while taking the money from the public purse, or
- taking money from the public purse but subject to a very stringent, uniform process?
467. **Mr Murphy:** The Bill introduces the notion of maximised autonomy. As the Minister and the Department are always telling us, maximum accountability will accompany that. We have not really had a debate about what this autonomy means. The concept has arrived here in the Bill, but there has been no lead-up to it in the form of an exchange between all the stakeholders — forgive me for using that word — to date. We have not explored what is in fact meant by autonomy. What are we talking about? As it stands, a primary-school principal — I was one until 12 months ago — has autonomy over a maximum of between 8% and 10% of his or her budget. How much real autonomy do they have? On top of that, we have a Department that appears to be practising a command and control approach. What approach do you take to the delivery of a curriculum, a teaching strategy, pedagogy or any of that? What is this autonomy that we are talking about? There are issues there.
468. I want to return to something that you said earlier about the way in which teachers are employed. Currently, there are six employing authorities, all of which do things slightly differently. My experience was in the maintained sector with the Council for Catholic Maintained Schools (CCMS). The model being proposed here has been referred to in some circles as “CCMS-lite”. My experience of CCMS as an employing authority and when working as a principal with a board of governors — my trade union experience bears this out as well — is that situations arise in the normal course of events in which the employing authority says that an issue is a matter for a board of governors, but the board of governors says that it is an issue for the employing authority. It is a system that is, I suppose, unique to this place and every aspect of our society because we love our constructive ambiguities. Constructive ambiguity is at the very heart of this Bill. From a trade union perspective, we think that

- we can do without that here. This goes back, Chair, to your question to John. We would like it established, clarified and clearly spelt out — without that ambiguity — that ESA is the employer. You say that you have received legal advice that provides that clarity, and I accept that, but we do not see it in the Bill and we would like to.
469. **Mr Devlin:** There is another point. I picked up on what Gerry said. At the moment, we have boards of governors who make decisions on employment. As Gerry said, that is a board issue. If a board of governors acts against the advice received and there ends up being an industrial tribunal, who picks up the bill? It is the people at the top. When I read through the Bill, I can see that situation happening again, “You are not allowed to interfere with what we do. You can reject or accept our advice, make a decision but not pick up the bill.”
470. I picked up more from reading the Hansard report of Chris Stewart’s presentation to the Committee. That is really where most of the information and clarity came from. It appears that the Bill will extend employment liability to the voluntary sector, which currently is not the case, as it takes out separate insurance for that.
471. **The Chairperson:** This is very difficult for the Committee because we go here, there and everywhere. You raised a whole range of other issues, but let us stay on the employment issue in clause 3.
472. There surely is ambiguity in the system now because if there is a dispute in some sectors and the dispute goes to court, it is not the employing authority but the relevant board that picks up the bill. That is an ambiguity, which, I think, has to be redressed. People want to be the employing authority, but when something goes wrong and goes to court, it is not the employer but the board that picks up the bill. I do not see how that is a fair system. I think that that —
473. **Mr Devlin:** That is exactly what I am talking about.
474. **The Chairperson:** Is that what you are referring to, John?
475. **Mr Devlin:** Yes.
476. **The Chairperson:** I will not mention any sectors so that I am not accused of picking on one sector over another. Let us be general and say that there is uncertainty. Are you saying to us today that you do not see that being resolved by what is currently in place in clause 3?
477. **Mr Murphy:** We are saying that, as far as we are concerned, the way in which that is written means that the ambiguity will remain in the system.
478. **Mr Lunn:** On this issue of constructive ambiguity, when I read the Bill, I see only one thing. I listen to people such as Chris Stewart and our legal advice, and I accept what they say, but then I hear a different version from you. That is not to say that I disagree with everything in your paper, by the way. To my mind, it is absolutely clear that ESA will be the employer or the employing authority. I do not think that there is any difference between those two descriptions. I will not mention sectors, Chairman, but if I were a governor or headmaster of any type of school, I would welcome that. What you have is ESA as the backstop employer — the last resort employer — and all schools being given almost complete autonomy to run their own affairs within the scheme of employment agreed by ESA. I see that you want that to be standardised. I think that there may be a bit of wriggle room, but we can work on that. As I understand it, this will mean that certain schools, which had to pay for expensive liability insurance over the years, will no longer have to do so. They should be glad about that. I do not get this ambiguity that you refer to. My reading is that it provides clarification rather than introducing ambiguity.
479. **Mr Murphy:** When there are 1,200 schools submitting schemes of employment and schemes of management, and you are running a delegated model, the opportunity for various interpretations to be applied to the same set of rules is huge.

480. **Mr Lunn:** The point is that they have to be approved by a single body.
481. **Mr Murphy:** To use a football analogy, the size of the pitch and how it is marked out will be approved by the central authority, but what takes place on the pitch will be different for every school.
482. **Mr Lunn:** I do not think so. I think that most schools will adopt a model scheme provided by ESA and be glad to do so. As I understand it, for the schools that do not adopt that scheme, ESA can interfere only if they step outside what is agreed in their scheme of employment, which will have been approved by ESA.
483. **Mr Devlin:** I am glad to hear you say that. We are of the view that there should be a model scheme in place for all schools. If a school wants to deviate from that model scheme, it would need to be able to justify why it is doing something slightly different. That is not to say that that will be a problem, but a process needs to be in place. There should be agreed model schemes and the opportunity to vary from them, but a school that does so must provide a reason, and, hopefully, there should not be a problem. However, in the way that the Bill is written, there seems to be a bit of a clash about how much ESA can interfere without going down the route of saying that a school cannot do something. It is more of a negotiated type of approach to make small changes.
484. Trade unions come in at the margins when things go wrong or do not happen. That is not to say that we are constantly in and out of schools trying to sort things out. That is not the story. We rarely visit some schools; we are in others quite a lot. These things are on the margins, and we are looking for an opportunity to tidy up areas that have caused particular problems down the years so that the system operates smoothly. We do not want to be going in and out of tribunals or going to court. We want the opportunity to put something in place that will make the system run smoothly.
485. **The Chairperson:** Yet there is an issue with, for example, clause 13 of the Bill, which deals with the modification of employment law. We are talking about having uniformity, yet some of us would say that there is currently a huge disparity in the fact that some sectors are able to opt out under the Fair Employment and Treatment (Northern Ireland) Order, in relation to the employment of staff on the basis of staff having or not having a Catholic certificate. That is a huge issue. Is there unanimity among the unions on that issue? Do they all want to see equity in the treatment of staff? If there were to be secondments, deployments or the redistribution of staff, as things stand, the employment opportunities for a large section of teaching staff without a Catholic certificate would be restricted. I will park that point. It came from my reference to clause 13, through which the Department wants to take on powers — not that it ever wants to do anything else.
486. Clause 13 states:
“The Department may by order make such modifications in any statutory provision relating to employment, and in particular in any statutory provision”.
487. One union stated:
“The Education Department should not have the authority to unilaterally make modifications to ‘any statutory provision relating to employment’.”
488. Further comments on that include:
“The Department should be required to obtain agreement with DEL rather than simply consult.”
“The Department should be required to consult with staff representatives, not just staff.”
489. Clearly, power is being given to the Department. The reasons for the Department seeking this power are outlined in the delegated powers memorandum:
“This clause allows the Department to make an Order to modify employment law. This is necessary because of the particular nature of ESAs functions as an employer of school staff. Although ESA is the employer, a number

- of employment functions are delegated to the Boards of Governors of grant-aided schools. It is intended that this power will be used to make Orders ensuring that the appropriate body is liable under employment law (e.g. in the case of an employment tribunal). It is envisaged that any Order would be procedural and therefore the negative resolution procedures would be appropriate.”*
490. What does all that mean in practice? I am glad that Chris is here because he probably wrote that. We are talking about having one body to regularise things, but as we explore this one element of employment, we are beginning to discover that we are not getting there. Maybe Chris will give us some explanation of clause 13 in the later session. Do you have any comments on that? I want to move on to members and open up a number of other issues.
491. **Mr Murphy:** First, we absolutely support the concept of equality being applied across the system. You referred to the Catholic teacher's certificate. We do not support that certificate being used as any sort of barrier to the free movement of teachers across the system. It is our understanding that CCMS is consulting, or had been consulting, on the application and use of that certificate within the system. I hope that that clarifies that point.
492. In relation to clause 13 and the Department unilaterally changing employment law, I would imagine that the Department would be extremely careful in employing that provision because the ramifications in other areas of employment would be huge. There is a duty on the Department to consult but I see that our colleagues in one other union, and I think that we are talking about the same union, are saying that that would be insufficient, as it does not place on the Department any requirement to obtain, say, DEL's agreement. That is a further example of areas such as the tribunal, which requires greater clarification on, and investigation of, what the intention is and how it would work in practice.
493. In fairness to the Department and Chris, who, I am conscious, is sitting here, he highlighted, in his contribution to the Committee in Omagh, that the tribunal and a number of other points were work in progress. I absolutely agree with where you are coming from on clause 13 and understand the thrust of your question, but I do not have an answer. The Department may have an answer now, but probably did not when that memorandum was written.
494. **The Chairperson:** My concern is that, despite the time that it has taken us to reach this point with the Bill, we still do not have clarity on the circumstances in which the Department would want to use those powers to make those modifications. Surely it would be better to look at the current suite of employment policies and try to be clearer about what the Department envisages doing rather than our saying, “Well, we will create this organisation, and we will still give the Department the power to change, whenever necessary or appropriate, employment laws.”
495. Surely we already know the issues with employment law. Maybe we should not be putting the cart before the horse. We will have to look a bit closer at that.
496. We will move to members because I want to raise issues with boards of governors, and so on. If we expand the discussion, we will, I hope, get to that.
497. **Mr Kinahan:** Thank you very much for your presentation. I have various queries but I will start two on the current subject. One of the main reasons for bringing in ESA was to cut costs. If ESA then takes on the role of employer of all the different groups of teachers, surely the cost of employment will rise as we equalise how teachers are employed across all bodies. Do you follow me? As people come in at different levels, everything will have to be equalised through ESA as the single employment body. Do you envisage a rise in costs for the Department?
498. **Mr Murphy:** There will be no equalisation of teachers' salaries because they are

- centrally schemed. There will, inevitably, be some equalisation with the non-teaching workforce in the sector. There is a significant challenge in that we do not support any race to the bottom or an equalising down. We want them to be equalised up. However, we think that that is unlikely.
499. There has been talk of £40 million of savings, and we think that there will be savings over the years because of the removal of duplications. For example, we will have one payroll instead of seven, and there are various opportunities for savings in school transport and other issues. We perceive savings being made. We do not doubt that, initially, there will be some possible increase in costs as, to use a tired phrase, some investments are made to effect savings. Overall, however, we anticipate savings and further anticipate that those savings will make their way directly into classrooms and will not disappear into greater bureaucracy. The short answer to your question is: yes, we envisage that savings will be made.
500. **Mr Kinahan:** You said that you are keen to have representation on ESA and that giving the sectoral bodies places was not your preferred way forward. Who else should be included and how better could the body of ESA be represented? We know that you want to go on it, but are the Welsh are doing anything different that we should be doing? Is that an unfair question?
501. **Mr Devlin:** Membership now is very prescriptive, and there is prescription in who can be on a board and where they come from. Such a large number is already blocked out, and there could perhaps be a reduction in the representation. We advocate reducing the representation of sectoral bodies from four to three and allowing us, as employees' representatives, into the system. We include non-teaching colleagues in that because many non-teachers are employed in the system. You could open up community representation through a stringent public appointments process. I am sure that people here have been through
- public appointments: having to fill in an application form and go for an interview to take those positions is very important, because we are putting responsibility into the hands of a small number of people, and, therefore, they need to be suitably qualified to undertake that role.
502. **Mr Murphy:** There are eight political representatives and 12 others: four trustees, four transferors and four from the general public. That group represents broad society as well as specific sectoral interests. However, a huge group — employees — is unrepresented on the board; 23,000-odd teachers are directly employed in the system with 8,000 to 10,000 ancillary and auxiliary support staff. It seems only logical to us that that constituency be represented on the central decision-making body for the entire system. The Bill stipulates that there should be four community representatives. Our community is not the community that it was 30 years ago; we now live in an extremely diverse and multifaceted society. Getting four individuals to represent that group will be quite a challenge. However, that is not primarily our concern. The trade union concern is that we would not be represented on the board of ESA.
503. I will switch hats here. As the northern secretary of the Irish National Teachers' Organisation, I made a submission in which I suggested that paragraph 2 of schedule 1, which refers to the make-up of the board, could be altered so that the transferors and the trustees could do with one representative less, to make space for one representative from the teachers' trade union side and one from the non-teaching side.
504. **The Chairperson:** Gerry, could it be modified so that one of their representatives is a teacher? Take the composition, the four and four; there was a reason why that was the case. Currently, you do not have representation on the boards.
505. **Mr Murphy:** Yes; that is correct.

506. **The Chairperson:** That has been an ongoing issue. One of the reasons why the board is constructed in that way is to reflect the Education (Northern Ireland) Order 1986, which is the same as an education and library board. It is intended to protect legal rights that were conferred by the 1946 Education Act.
507. Can an argument be made to the transferors and trustees that in the appointment of their four representatives, they should ensure that one of them is representative of teachers in their sector? Is that one way round it?
508. **Mr Murphy:** That is certainly an option.
509. **The Chairperson:** OK.
510. **Mr Murphy:** However, I am suggesting another option, which I prefer.
511. **The Chairperson:** Yes. That's OK.
512. **Mr Lunn:** We all have a whole lot of questions, but I will restrict myself to a couple.
513. In your presentation, you talked about your apprehension at the inclusion of the requirement for ESA to appoint governors committed to the ethos of a school. There may be scope for changing the meaning of that slightly. I am not being facetious when I say that perhaps it should read "ESA should not appoint governors who are not committed to the ethos of the school", or something like that.
514. You say that all schools should have a similar ethos, based on providing an education that develops each pupil to their maximum potential. However, they all do that anyway. That really is a different subject. What you are talking about here is the removal of the faith-based ethos of some schools, the Quaker ethos of a particular school, the ethos of integrated schools, which is slightly different from that of some other types of school, and the Irish-medium schools. Those ethos have been built up over a long time — over a century in some cases — and it seems a bit Stalinist to talk about gradually removing a valuable ethos that has been built up over time.
515. **Mr Murphy:** I disagree; that is not what the Northern Ireland Teachers' Council is saying. However, we do not think that ethos should be a qualifying factor. I am grasping for the correct term, so I will just say it: when you consider the other impositions visited upon boards of governors by the Bill, by introducing ethos, we further reduce the pool of individuals who may be willing to present as governors.
516. **Mr Lunn:** Surely, it boils down to what level of heavy-handedness the Department or ESA introduces to enforce it. You cannot really put that in a Bill, can you? If the ethos point is valid —
517. **Mr Murphy:** I noticed that when Chris was questioned by one of the members of the Committee on that very point in Omagh —
518. **Mr Lunn:** It was me.
519. **Mr Murphy:** It was you; you are consistent. He said something along the lines of — I am sure that he will correct me if I am wrong — that if a governor deviated from a position on an ethos and its nature upsets the effective and smooth functioning of a school, they will look at that. Therefore, the potential for heavy-handedness exists.
520. **The Chairperson:** It is the dreaded article 101.
521. **Mr Murphy:** The NITC recognises the importance of governors being committed to their schools; we see it as a positive thing. However, its presentation as almost a precondition to membership of a board of governors is causing us to baulk a little.
522. **Mr Lunn:** I do not know how far you could take that theoretically. You could say that it would be offensive to that article if a Protestant was appointed to the board of a Catholic school —
523. **Mr Murphy:** Or vice versa.
524. **Mr Lunn:** — or if a non-Quaker was appointed to the board of Friends'

- School. That is stretching it a bit. The ethos is slightly different from that. I find it a wee bit difficult to put this into the correct words for you, but you are, perhaps, making too much of that, although I acknowledge that there may be a better form of words than that in the paper.
525. **Mr Devlin:** It is interesting to read in Chris's submission about tying down what ethos is, because it is sometimes difficult to put it into words. People say that there is a great ethos in a school, but what does that actually mean? If I ask somebody to tell me what it is, they will struggle. That happens all the time. It is a very loose term.
526. **Mr Lunn:** Can I slow you there? The discussion in Omagh was on a hypothetical case that we all know about, and it is probably easier to identify somebody who is not committed to the ethos of a school than somebody who is.
527. **Mr Devlin:** We advocated a standard ethos, which you mentioned earlier, to maximise the potential of the children in the school. That ethos should appear in every school.
528. **Mr Lunn:** Absolutely. However, this is a slightly different matter.
529. **Mr Murphy:** The first couple of clauses refer to ESA as having a responsibility for moral and spiritual growth. Therefore, the genesis of a collective ethos is already there.
530. **Mr Lunn:** In your presentation, you talk about the powers of the inspectorate to inspect, copy and take away documents. You say that there should be a positive relationship between schools and the inspectorate that should not make the inclusion of that clause necessary. I do not know whether it is laid down in legislation at the moment, but is that not just a statement of the powers that the inspectorate already has? In practice, it does not make any difference.
531. **Mr Murphy:** It is an extension of the powers that it has and, I believe, comes from legislation in England in 2005 on Ofsted's powers. You are quoting from INTO's contribution as opposed to that of the NITC.
532. **Mr Lunn:** I am not; I am quoting from paragraph 9 of the NITC submission.
533. **Mr Murphy:** We do not feel that it is necessary for its powers to be extended in that way.
534. **Mr Lunn:** Will they be extended? I would have thought that an inspector going into a school has the authority, whether written down or not, to inspect, copy and take away documents.
535. **Mr Murphy:** No; inspectors do not have that power. We were engaged in industrial action in the previous 12 months, part of which was non-co-operation with the inspectorate. As part of that non-co-operation, we were able to withhold books and data from it.
536. **Mr Lunn:** I was not aware of that. What would be the point of a school wanting to withhold documents from the inspectorate if you are talking about a positive, free and open relationship between a school and the inspectorate? I am not standing up for the inspectorate; I just wonder what the difference is.
537. **Mr Murphy:** When we get to the stage of withholding documents and data from the inspectorate, the relationship to which you and I referred has broken down.
538. **Mr Lunn:** What sort of documentation, information or data would a school want to withhold from the inspectorate?
539. **Mr Murphy:** Central to the inspection process, for example, is the school development plan. Withholding it, from a tactical point of view, if you like, denies the inspectorate a context within which it can make an assessment of a school. From an industrial relations point of view, the action that you are taking would be effective in that respect.
540. **Mr Lunn:** A school should lay itself open to inspection if it has nothing to hide.
541. **Mr Murphy:** I accept that. However, when you are taking industrial action,

- you are not making yourself available for that.
542. **Mr Lunn:** You are moving it on to industrial action, but I am just talking about the normal relationship between a school and the inspectorate. Others here may disagree, but the inspectorate is not there to condemn or intervene, although that sometimes happens, but to help, advise and support.
543. **Mr Devlin:** That is perhaps —
544. **Mr Lunn:** It can hardly do that unless it can get full information from the school to start with.
545. **Mr Murphy:** In the general run of things, it would get that information. The only time it would not get it would be if you were taking industrial action.
546. **Mr Devlin:** It also highlights, perhaps, that it is a strengthening of its powers in this area. There is a concern, from our point of view, that there may be a continual breakdown in the relationship with the Education and Training Inspectorate, which previously had been quite reasonable.
547. You mentioned support and guidance. We have great concerns about that because what would almost be deemed the pastoral role that it had in the past seems to have slowly disappeared and has become more of an Ofsted-style role.
548. **Mr Lunn:** I have heard that view, which is why I said that others may disagree. I cannot agree with that particular wording, although I am sure that we will take it on board and look at it. Thank you, Chairperson; I could go on all morning.
549. **Mr Rogers:** I want to make a couple of quick points, the first of which is about representation on the board. You are looking for representation on the ESA board. You also mentioned the central planning group for area planning. However, if you were truly represented on the ESA board, would you need extra representation on the area planning board as well?
550. **Mr Murphy:** Yes, I think so, because it is possible that the area planning function would be delegated down in ESA. It would be essential that we be represented on the planning group, which would most likely work to one of the directorates in ESA. That will probably be done on a more localised basis. The ESA board will take decisions on a centralised basis. I imagine that the plan will be made at a local level and will come to the ESA board for approval. We would like to be involved at the earliest possible stage in the planning process.
551. **Mr Rogers:** OK. You also said that unions have a right to have a representative on the board of governors. Is it really the board of governors or is it the ESA board?
552. **Mr Murphy:** No, when I talk about boards of governors, I am talking about trade union representation as of right. Schools elect a teacher representative to a board of governors. With the increased powers accruing to boards of governors in the Bill, it is essential for our members to have a trade unionist representative or their nominee. We are being careful about what we wish for. Populating this could be difficult, but people who would be acceptable to our members in schools would sit on the boards of governors in addition to the teacher/governor.
553. **Mr Rogers:** That clarifies it for me. The other point, John, was that you said that when you read the Bill, academisation jumped out at you. Will you clarify that?
554. **Mr Devlin:** The way that voluntary grammars are organised in receiving their money directly and running their own show within that is akin to the academisation that has occurred in England. In some ways, the Bill opens the door to any school and talks about it being given as much control as it wants. Chris spoke about schools wanting to have their own bursars. A bursar would be the key person to manage that one block of money and how it is distributed. We picked that up straight away in the NITC discussion. We felt that there was certainly the footprint of that in the Bill or the opportunity for it.

555. **Miss M McIlveen:** Thank you very much. Gerry, in your opening statement, you referred to the Bill as a curate's egg. What are the redeeming features of the Bill?
556. **Mr Murphy:** The fact that we are going for one central management structure across the entire system. That also goes to Danny's question and the savings that will accrue from that over time and the fact that we should see greater continuity in management processes. The organisation that I represent is also a professional organisation, and we would see large benefits in curricular or professional development terms.
557. For example, ESA will have responsibility for workforce planning and professional development, both of which are notably absent from our existing system. We see those as being the good parts. It is unfortunate that, in responding to this, we did not wish to come with a 10- or 12-page document. We have tried to give someone such as yourself the opportunity to ask that question and then present the other stuff that we know to be at issue in the broader debate.
558. **Miss M McIlveen:** What you have presented here are big issues, but they are all very negative.
559. **Mr Murphy:** Sorry.
560. **Miss M McIlveen:** That is absolutely fine; we need to hear that.
561. **Mr Devlin:** We still have problems where special needs provision varies in various parts of the country. Here is an opportunity to bring that all under the one tent and to make sure that whether in deepest Fermanagh or in Ballymoney, you receive the same treatment and opportunity. You can translate that from special needs to many other areas and ask whether we are getting equality of opportunity. This is a big opportunity to make up ground in that area. We have been talking about this for a long time, yet there are still people suffering from inequality in different parts. In some ways, that is why we need to forge ahead with this.
562. **Mr Murphy:** Structurally, the Bill takes us to a place where we can address those inequalities of access and provision that John mentioned. For that alone, the Bill is to be welcomed. The other issues are huge, but we will work them out between us eventually.
563. **Miss M McIlveen:** In your submission you state:
"The NITC opposes the inclusion in the Bill of legislation to ensure that sectoral bodies are perpetuated and supported by the already over-committed Education Budget."
564. What is your view of the sectoral bodies?
565. **Mr Murphy:** Since they were first mooted in, I think, paper 26 all those years ago, we have opposed them because of what we consider to be the financial burden that they place on the system — money that we feel could be better spent to support teaching and learning in classrooms. That is fundamentally it.
566. Sectors are entitled to establish a body to represent their point of view and to promote their interests. However, it should not be funded directly from the Department of Education's budget. If schools choose to spend their money supporting sectoral bodies, that is up to them, and the delegated autonomy model that is suggested would permit that. However, that decision would have to be balanced against their capacity to deliver the curriculum and the entitlement framework and to meet all their other requirements. However, we do not think that the direct funding of sectoral bodies by grant is the right way to go.
567. **Mr Devlin:** When this was first mooted and we discussed it with the Minister, we were told that the sectoral bodies are there, and we asked whether they would be there for ever. They may have a place in the initial phase of the Bill's operation to allow for transition, but keeping them forever is perhaps not the right step forward when we bring the whole system into operation. Perhaps they could operate for a short period of three or four years, after which their continued need could be reviewed.

568. **Miss M McIlveen:** Are you of the opinion that the controlled sector does not require a sectoral body?
569. **Mr Murphy:** No. If everybody else has a sectoral body, there is no reason why the controlled sector should not have such a body. However, if there is to be such a body, it should be funded by the schools. The schools should choose to opt into such a body and fund it.
570. **Miss M McIlveen:** NITC believes that representatives of the workforce should, as of right, be on the consultation body for the planning process. From your comments, I understand that you do not believe that the sectoral bodies should play a role in that.
571. **Mr Murphy:** No; I do not think that that is what we are saying. The Bill makes provision for representative bodies in the area planning process; that would incorporate the sectoral bodies.
572. **Miss M McIlveen:** Do you feel that they are key?
573. **Mr Murphy:** Yes. It is their funding that we are talking about.
574. **Miss M McIlveen:** OK. When referring to the area planning provisions in the Bill, the INTO submission states:
- “There is a remarkable lack of detail throughout this section in respect to how the adequacy of educational provision in an area will be decided and indeed how an area is to be defined.”*
575. Will you expand on how you feel that might be improved?
576. **Mr Murphy:** An audit or snapshot in time was carried out, and the area planning process unfolded subsequent to that. As you know, we only have the draft post-primary document at the moment. Like you, we are waiting to see what comes out of that. On foot of that and, indeed, on foot of what comes out of the primary one that is to follow — and the Department has been sitting on the special education one from February — it is possible that when those processes work themselves through, we may see a number of flaws or, indeed, shortcuts presenting themselves in the planning process, and there may be subsequent modifications to that process. So, the Bill is not really in a position to be any clearer than it is.
577. The other issue I raised in the INTO presentation is the word “area” and how to define it. The Bill refers to the provision of a map, but there is no idea about how that map will be arrived at or how its scope will be determined.
578. In respect of area planning, the other thing in the presentation that you have not mentioned is that we would like to see a statutory obligation on the Department to consult, as far as possible, with education providers south of the border and along the border corridor in order to have education provision that straddles the border.
579. **Miss M McIlveen:** Have you had a discussion with the Minister about that aspect?
580. **Mr Murphy:** No, but I would be happy to do so.
581. **The Chairperson:** John, you talked about service provision. This has always been an issue, and it has raised its head numerous times in the Committee. Whether you are in Enniskillen or Ballymoney, and I am glad you mentioned Ballymoney, is there not a worry that — whether there is currently good practice in one place and poor practice in another and whether it is the Department or ESA — given the track record, we will end up settling for less than good practice, and that rather than raising the bar to ensure that everybody gets the best possible outcome and service provision, we will end up with something far short of that?
582. The curriculum advisory and support service is a prime example; it depends on where you are. Take the area plans, which Gerry mentioned: to be honest, I do not know why the Belfast Board even bothered turning on the computer. All of us could have written that plan. However, the North Eastern Board went beyond expectations, with consultations and meetings, and it did all sorts of things.

- The detail and vast array of information provided made it very challenging for everybody. I am very worried that, as far as ESA is concerned, we will end up with the Belfast Board model for area planning as opposed to the North Eastern Board model.
583. **Mr Devlin:** I agree. With any change, there is the danger that you do not quite hit the mark and end up going for something in the middle.
584. I wear another hat, as I am a North Eastern Board member, and I am fully aware of what you are talking about. The work it did on area-based planning was outstanding. The good thing — I am led to believe — is that the other boards were told to go away and do it in the same way as the North Eastern Board. That is part of the reason why there has been a little bit of a delay. That board set the template. The key, of course, is in identifying good practice and using it to design the system. How can we do anything about that? We will just have to trust the professionals. A lot of very skilled and able people have exited the system, particularly the boards, as we move towards ESA, and that is the danger. We have not even got to the point of appointing second-tier personnel, who, I suppose, will be very key to how the thing shapes up.
585. **The Chairperson:** I have referred to this before, but ESA is claiming, in a paper that we got last week, that it has reduced by 53% the number of people that it has employed — in an organisation that does not exist. It is doing really well, and it has not even got up and running yet.
586. **Mr Devlin:** It just so happens that I was at a board meeting yesterday, and that was brought up. When you look at it, there are a lot of holes, and it has prompted more questions than answers.
587. **Mr Hazzard:** Thank you for your presentation. You mentioned, and I agree, the dangers of opening the door to fee-charging elite academies. Is there also a danger that something such as this might happen with the removal of support for the sectors? If you take away their floor of financial support, certain schools might charge fees or look to make up the money in other ways that might hamper the children and families involved.
588. **Mr Devlin:** Yes, I suppose there is the danger of that. We hope that the need to go looking for extra money will disappear as the savings in the system will allow for the release of more money to the front line. From one point of view, this has created a little bit of disparity in the system in that we have sectors that seem to have alternative funding sources helping out their schools. We are trying to equalise the provision, the delivery and the outcomes across the whole Province, and we are trying to raise the bar in all of this. Funding is a big factor, and there are some big differences in the access to money that some schools have.
589. **Mr Hazzard:** You referred to the Scottish model of inspection. Will you expand on the benefits of such a model?
590. **Mr Murphy:** Basically, the Scottish model is about quality assurance. The inspectors arrive at your school, and you will welcome them and tell them where the school is at in achievement, value added and extra-curricular parental involvement. You would also tell them the measures that the school has taken to get to that point and where you plan to go in the future. The inspector would look at all that, benchmark it against national standards, make suggestions as to how you may improve or accelerate your processes, point out any shortcomings and suggest how you may address them. That is it in a nutshell.
591. We have a different approach, which changed significantly post-Every School a Good School in 2005. We were 60% to 70% down the road of the Scottish system prior to 2005. Under Marion Matchett's time as chief inspector, her team brought out a document called 'Together Towards Improvement' which was a valuation instrument for schools, and was developed in conjunction with teachers. It provided a template for

- schools to assess themselves. What we had evolving at that stage was a system in which the inspector would have quality-assured fundamentally what the schools were doing.
592. In 2005, Every School a Good School came into being, and we had a shift to a more inquisitorial and data-driven approach to inspection, and with Every School a Good School, the development in the system of a whole series of consequences for inadequacies. Punitive elements began to appear, such as the placing in of special measures, the additional visits by the inspectorate in the period after an inspection and the production of an action plan. All that came after that. We are promoting the idea of the Scottish approach because it allows for genuine partnership working across the system, and we feel that that approach — and my colleague mentioned it earlier — has been lost to us. We do not think that, in the first instance, this is in the interests of our members or the children. Therefore, it is not in the interests of the system.
593. **Mr Lunn:** What do the Scottish inspectors do if they find that a school is in need of support or is failing? Does the school have an opportunity not to disclose documents to the inspectorate?
594. **Mr Murphy:** I do not know the answer to that question.
595. **The Chairperson:** Clause 37 concerns the review of certain decisions on schemes of management by the tribunal. The interest by organisations in having the right to use that mechanism is common in a number of submissions. Is there not a risk that this will become a grievance and become bureaucratic and burdensome? Ultimately, my worry is that it will only take the first decision to be judicially reviewed either to kill off the tribunal and its effectiveness in one swipe or to add to an already convoluted system. Do you see the need for the reference to the tribunal? At this moment, there are few ways for you to refer issues.
596. **Mr Murphy:** We see the need for the tribunal because, in effect, the system will enjoy the biggest change in virtually a generation and issues will need to be teased out and resolved, especially in a landscape in which all the different schemes of management and employment will come forward. It is better that they are resolved by means of a tribunal than by reference to the courts because if we go to the courts, our learned friends will take huge chunks of money that would be more properly spent on educating our young people and paying our teachers than on paying for second homes for lawyers. So, we are very much in favour of not spending the money in that manner, and the tribunal provides a means to do that.
597. I would be very interested to see how the tribunal will be made up and whether issues will automatically go to the tribunal or whether there will be a mediation process beforehand in an attempt to resolve issues at the lowest possible level. We are very much in favour of that. Yes, we see the need for the tribunal and are not concerned that it will become overly bureaucratic. It could possibly be quite busy in the first 18 months to two years of the new dispensation, if we can call it that, and it should fall off after that.
598. **Mr Devlin:** It is not to be viewed as something that will mediate or be between schools and ESA. We have said that we want to have access to some mechanism when we do not agree with something. As Gerry said, we are looking for something that will maybe keep the matter out of the courts because, ultimately, if we do not have access to it when there is a dispute, we will have nowhere else to go but into the legal side of things. Again, there is an opportunity here, maybe, to bring in something that will benefit all of us, ultimately.
599. **The Chairperson:** Could it be modified to be something that may not necessarily have been its original intent? I see merit in what you are saying in relation to this being something short of going to court. My worry is that if there is no

satisfaction from those who may have had recourse to the tribunal in the first place, the court is where they will end up, ultimately. They may be able to go there now, anyway, but I think that it is a valid point and well worth further consideration.

600. **Mr Kinahan:** I am really on the same point: whether we should be exploring whether a tribunal could be too limited, if it is too legally-bound and whether we should be having an arbitration system instead of, or as well as, a tribunal. Something that allows people to have representation—
601. **Mr Devlin:** I think that, in the way that we work, we try really hard to stay out of the formal area. We will always look to arbitration to see whether we can come to a consensus before we end up in some formal tribunal or something like that. Yes, we are interested in looking at some mechanism.
602. **Mr Murphy:** That is the way that things are going in the broader industrial relations front anyway. Arbitration is preferred; tribunals are becoming a point of last resort.
603. **Mr Kinahan:** As long as it has a short enough timescale.
604. **The Chairperson:** Just on a point of clarity and for my own information, does the Department give any funding to the unions for any work that they carry out?
605. **Mr Murphy:** Not that I am aware of, no.
606. **The Chairperson:** Gerry, John, thank you very much. This is the beginning of a long road. You were the first in. Thank you for that. No doubt we will return to your comments and to yourselves over the next period of time.

28 November 2012

Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
 Mr Danny Kinahan (Deputy Chairperson)
 Mrs Brenda Hale
 Mr Chris Hazzard
 Mr Trevor Lunn
 Miss Michelle McIlveen
 Mr Sean Rogers
 Mr Pat Sheehan

Witnesses:

Mr Aidan Dolan *National Association of*
 Mrs Clare Majury *Head Teachers*

607. **The Chairperson:** I welcome Aidan Dolan, director of education, and Clare Majury, the Northern Ireland president, of the National Association of Head Teachers (NAHT). Clare, you are very welcome. I think that this is the first time that you have been to the Committee as president.
608. **Mrs Clare Majury (National Association of Head Teachers):** Thank you very much. It is the first time, yes.
609. **The Chairperson:** I trust that you are enjoying your presidency.
610. **Mrs Majury:** I am very much.
611. **The Chairperson:** We wish you well in that role for the remainder of your time in office.
612. You have heard the comments made in the previous presentation, and I know that you have a particular focus on a number of issues. Aidan and Clare, you are now at liberty to make your presentation.
613. **Mr Aidan Dolan (National Association of Head Teachers):** Thank you very much, Chairman. We welcome the opportunity to make our presentation. By way of introduction, NAHT represents 800 school leaders in Northern Ireland, and our organisation operates throughout the UK.
614. There has been a lot of talk about trade unions this morning. All the teacher unions have a dual role, as we are also professional associations. So, it is largely within the latter remit that we want to comment, so our contribution may have less to do with the issues that have already been dealt with.
615. Let me say to begin with that we, too, support the Bill. It is a big step forward for Northern Ireland to have a single authority. We also support one of the key concepts driving this issue; increasing the autonomy of schools. The Organisation for Economic Co-operation and Development has analysed education systems across the world in 22 countries, including Northern Ireland, and concluded that the quality of education in individual countries is improved by increasing the autonomy of schools. As a professional association, we support that.
616. I remind the Committee — and members probably have it in their meeting papers but it has not been mentioned this morning — that the Northern Ireland Assembly research paper 699-12 on the Bill raises lots of points that require clarification. I think that the paper runs to 27 or 30 pages, so, as Gerry Murphy said earlier, we have not sent the Committee a point-by-point critique of the Bill. There are probably only two or three key points that we want to bring out, particularly in relation to school leaders, and you have my paper.
617. The one thing that we need to be careful about here is that there is a level playing field across all schools. Northern Ireland is complicated, and our education system will remain complicated. We are not going to have a single, unified education system at the end of this. We have five teacher unions and other professional associations. That is the reality on the ground, and one of the things that NAHT is concerned about is

- that there is a level playing field for all partners in education.
618. We have no problem with clause 2(5):
“encouraging and facilitating the development of education provided in an Irish speaking school”.
619. There is a similar provision on integrated schools in article 64 of the Education Reform (Northern Ireland) Order 1989, and we have no problem with that either. However, I think that it runs counter to the idea of having a level playing field for all schools. If the Department wants to encourage and facilitate, it should do so for all schools — faith schools, integrated schools, Irish-medium schools, and so on — because the fundamental principle on which we have built and predicated our system is parental choice. We support parental choice. There is fair degree of consensus in our system on parental choice, and we will not argue against it. That is the first point in the presented paper.
620. I will talk now largely to the fourth point, the one on which our paper goes into most detail. There has been some talk this morning about curriculum advisory and support service (CASS), staff development and all of that. Clause 14(4) of the Bill states:
621. “Documents, training and advisory or support services provided by ESA ... are to be provided free of charge.”
622. We take issue with the last three words. First, we may sound like turkeys voting for Christmas if we say that we do not want this thing free of charge. However, we are alert enough to know that there is no such thing as a free lunch. So, what is behind this? To be honest, we believe that it runs counter to autonomy. The points that I have written down are to do with a school being in control of its budget and decision-making, in which case nothing, beyond classroom teaching, is more fundamental than a school’s staff development aspect.
623. I am a former head of a school and Clare is a serving head, and we know
- that one size does not fit all in the current climate. In the old days, with CASS, and so on, I completed a form every year for the training I needed. I got back annually a menu that did not contain any of the things that I wanted. What I had ordered for breakfast was not on the menu. This was to do with the old system being centralised and top-driven. Only certain training could be provided. I am not here to criticise what CASS has done. Much of its work on child protection with different agencies was exemplar. We make the point that we — the schools — should be in control of this. For example, I have been involved in self-evaluation at an early stage. We were probably ahead of the game. Where did I go to get the training? I went to other schools that were already ahead of us, and asked experts, teachers and leaders in those schools to come to my school. I paid the expenses, and so on, out of my school budget. So, we knew the training that we wanted.
624. Our school development plan was unique. Each school development plan is unique and gives rise to staff development to meet the needs of that plan. So, making it free of charge means that it is not in the budget and is, therefore, controlled back in the Education and Skills Authority (ESA). If ESA takes our advice, I foresee it employing people in its support service who are, or were recently, serving school leaders and teachers and there will be a turnover of their trainers so they are fresh, new and up to date. If that is the case, schools will opt to purchase that out of their budgets. If it is imposed and free, how can you then go off? If you were going to a CASS course, for example, under the old model, you needed a substitute teacher — the class could not be abandoned — and you could get one. If you organised training yourself in school, you could not get that. You also had to pay that substitute teacher.
625. The thrust behind the development of education in Northern Ireland is to increase autonomy. NAHT supports

- that. However, the Bill, as written, runs counter to that.
626. I apologise for a typographical error in my submission at point 5. I referred to clause 13; it should have been clause 16. Clause 16(5) states:
627. “ESA may from time to time make by-laws”.
628. I have not found anyone raising that point in anything that I read in the documents, research paper from the Assembly or other commentaries on the Bill. We want to raise it because we do not know what it means. I am not coming here to bury, praise or even criticise. I am coming in ignorance to ask whether the Committee knows what powers we are about to give to ESA.
629. Schools have never been included in by-laws. However, I read through previous legislation and found in the Education and Libraries (Northern Ireland) Order 1972 that it applied to libraries. I think it applies to the Fire Service and some other bodies in other legislation. I spoke to colleagues’ solicitors in our organisation in England who told me that that power is not known in England.
630. Clause 16 gives ESA the right to make by-laws and have them enforced by the employees of ESA. We got it clarified this morning that all the teachers and school leaders will be employees of ESA. So, what by-laws will be created and what powers can be envisaged? Our solicitor in England talked about one case and said that it could grant powers of arrest for trespass, which you do not normally have. If someone trespasses on your land, you cannot arrest them. You can maybe ask them to leave by the nearest exit but you cannot actually arrest them. So, will there be a requirement on head teachers, school leaders, teachers and other staff of ESA to deploy these by-laws, and what are all the implications of this?
631. I would like, Chair, if someone in your position could clarify somewhere along the line what sort of by-laws are envisaged and what that may mean.
- Maybe it is innocuous but it could be frightening.
632. **The Chairperson:** Could we just clarify, Aidan: is it clause 13?
633. **Mr Dolan:** No, I believe it is clause 16. I made a typographical error.
634. **Mr Lunn:** It is clause 16(5).
635. **Mr Dolan:** Yes, that is what I thought. I apologise: in my paper, it is clause 13(5) and (6). It should be clause 16 subsections (5) and (6). Clause 16(5) states:
636. “ESA may from time to time make by-laws”.
637. Clause 16(6)(b) then refers to the people who can enforce them, stating that it can:
638. “authorise such persons ... after due warning to remove ... a person”.
639. Nobody seems to have raised that point, maybe because there is no need to, but it caused us some concern.
640. My final substantial point is about clause 38. The Committee may well see this as a semantic argument, but that clause requires boards of governors to promote:
641. “high standards of educational attainment”.
642. Well, maybe we are very pedantic — we are teachers — and this is just about the word “attainment” rather than the word “achievement”. If you Google them, you will find that there is quite a debate across the western world about those words and what they mean.
643. To explain attainment, let us imagine that I put up a high jump in this room but do not ask anyone anything about themselves, their gender, their age or their ability, and then ask to see who can clear the high jump. I am not taking any account of context. To the layman, “achievement” sounds like the same word, and in many documents, they are used interspersed. However, in the educational and academic world, the word “achievement” will take some

- account of context. I am only making a suggestion that the word “attainment” should be changed to “achievement” to take some account of the context of a situation.
644. My final point is about membership of ESA. We agree with the Northern Ireland Teachers’ Council (NITC) — we are members of NITC — about the role of sectoral bodies. However, although there are sectoral bodies, it is, perhaps, a bit unfair to them not to have representation on the ESA board. The maintained and controlled sectors each have four representatives, which seems like a bit of a carve-up between the large powers, leaving the smaller Baltic states without a voice. That is what we would like to present to the Committee.
645. **The Chairperson:** Thank you, Aidan. Clare, do you want to comment at this stage, or are you happy to come in later?
646. **Mrs Majury:** I just wanted to clarify one point about attainment versus achievement. This has been raised by our colleagues in the special schools sector. There are children who enter a special school achieving level 1 and leave the school still at attainment level 1. That does not mean that there has not been massive achievement. To reflect the needs of all Northern Ireland’s children, we need to look carefully at the wording in areas such as that.
647. **The Chairperson:** Thank you. Aidan, I want to try to get some practical sense of what you mean on the issue of autonomy, the provision or acquisition of services and the professional judgement of a teacher in a school. We have a situation that goes back to the ill-fated, ongoing issue of computer-based assessment.
648. Millions of pounds have been spent by the Department, Classroom 2000 and the Council for the Curriculum, Examinations and Assessment (CCEA), three organisations which are interrelated because one is to do with the technical aspect of getting it into the school while the others are to do with the actual product, whether it is the Northern Ireland literacy assessment or the Northern Ireland numeracy assessment. There are two organisations and two private companies, and there was a contract and all of that.
649. We went to a school last week and spoke to the principal. He said that that was fine, but that he had spent £2,500 of the school’s budget on an off-the-shelf product that gave him far better, more accurate information. However, there is a piece of legislation that says that he must do blah, blah, blah. Is that the very type of problem that you see being institutionalised.
650. **Mr Dolan:** Yes, absolutely.
651. **Mrs Majury:** Yes.
652. **The Chairperson:** So you end up with ESA being seen, and it would have the wisdom as to what needs to be the particular — let us move it away from the pupil in this case and concentrate a wee bit on the teacher. So ESA in its wisdom decides that teachers, for the advancement of their profession, need a professional qualification, so it will procure a particular service for those teachers. As a former principal, Aidan, you or Clare or whoever might say that you want to send your teacher on that course, but in your heart of hearts you know that it is as useless as the proverbial chocolate fireguard. Is that the risk that you see?
653. **Mr Dolan:** Absolutely. You have summed it up very well, Chairman. What you referred to there was the National Foundation for Educational Research (NFER) assessments. We have been saying all along that we did not want to stray into computer-based assessments from the start. Mr Lunn asked earlier whether teachers had ever been asked their views about that. All the unions have been sitting in meetings — meetings but maybe no meetings — in the same room with CCEA and saying the points right from the start about that: that it would not work. Our association carried out a survey of its members on this. Every single school used NFER because they believed in

- it. Many of them said that it differed from the old interactive computerised assessment system. That was the same problem. Now they use computer-based assessments and it probably was not fit for purpose.
654. So the point you make in relation to this is the same thing. The schools know what they want here. Computer-based assessment is supposed to be a diagnostic test that tells you how the child is moving forward. Great: you want to know that as a teacher. That is why we do NFER assessments. If NFER assessments did not do it, they would buy something else. We want to do the same with training. They say, “We have a school development plan which we want to implement that and make a success, and we need specific things to do that.”
655. It cannot come from the top down. The word “Stalinist” was used earlier. That was the way it was. I used to call it in the old days “table d’hôte”, but we wanted an à la carte menu. I think that I said that on some other occasion to this Committee some years back. That is what you need for training: an à la carte approach. You go in and pick to suit your own needs, rather than having a set menu.
656. Otherwise, you are sending teachers out. I have done that. You let the teacher out, you had a sub and got it paid for, and, in a way, to some degree, it was a jolly. The impact back in the school was minimal or maybe non-existent.
657. **The Chairperson:** Is there a risk that we will end up having a very expensive cartel? You have ESA on the one hand and CCEA on the other. Look at what is going on. There is an attempt to make sure that CCEA — and I have never been a great cheerleader for CCEA. It has had a bloated bureaucracy over the past number of years, which, I think, has been scandalous in the way that it has just grown and grown. I do not mind an organisation growing if it is producing goods, but there is a question mark around some of that. However, it does some very good work, so I will clarify that. It does excellent work in some areas.
658. However, you could now end up with situation where CCEA becomes the provider of all those services. Maybe the regional training unit is thrown in there as well. Lo and behold, whose responsibility are they under? They are under the Department. So you have the Department having its hand on CCEA, the regional training unit and ESA. So it is able to very easily manipulate and ensure that those large, monolithic organisations are directing how we educate, train and procure services. And the schools are just basically at the end of the chain, saying, “There is nothing else we can do; we will just have to accept it, because we do not have the power to go beyond that remit.”
659. **Mr Dolan:** Nor the money
660. **The Chairperson:** Nor the money.
661. **Mr Dolan:** It is the money. The golden rule is: he who has the money makes the rules. That is what will apply here. Whoever gets the money for this will be able to control it. Our argument is that it should go into the school.
662. **Mrs Majury:** I think that the point is that, probably because of the financial cuts, there has been an absence of training. The curriculum, advisory and support service has been stripped back and the regional training unit (RTU) has had 50% cuts. So schools have had to be more proactive. That is tied in with self-evaluation. What we are getting now is schools that are thinking outside of the box and getting bespoke training that absolutely suits their staff, children and communities. To go back to something that is terribly prescribed seems, to me, like a backward step. We cannot guarantee that such training is going to be of the quality that schools need and be value for money.
663. **The Chairperson:** Just on the point of funding, what is the current situation in relation to the budget for the school? That may be something that we will have to look at in relation to the review of the common funding formula. Here comes the cynic in me again: it is no coincidence that alongside all of

this, we have a review of the common funding formula because you have to align rationalisation in the state and administration with how you divvy money out. Is an allocation given under the current formula for that type of work?

664. **Mr Dolan:** No. The formula is largely driven by pupil numbers, the floor area, and so on, and we talked about insurance. There is nothing to earmark a staff development budget in a school, but any good school will take some of that and fire it into the area of staff development. Largely, the £20 million or £30 million that CASS was costing was held centrally, and you could not influence that or have any control over it.
665. You are right: there is a centralising model in what you described, and we want to ensure that if we are to have the autonomy, it is more than lip service. Autonomy came in with the Education Reform (Northern Ireland) Order 1989 and has developed since, but it is sometimes more in lip service than reality. About 60% or 62% of the Northern Ireland budget comes into schools. In England and Wales, that is up at about 80% or 90%, and staff development is delegated, in a lot of local areas, to the schools. We do not do that here. Only 60% of the actual cash arrives in schools, and 40% is retained centrally.
666. **The Chairperson:** There is an ongoing issue, and we have tried, not very successfully, to get to a place where we can see clearly what is a delegated budget. There is a continual dispute. I have seen figures this week that claim, or certainly make an argument, that there is a very lucrative and healthy slush fund sitting at the heart of the Department. It seems that when the Department wants to do anything, money appears all of a sudden, and then when you start to find out where it was originally in the budget, you wonder. So there is a question mark around all of that. However, by making all those changes, I still cannot get somebody to tell us, for example, that it will increase the delegated budget to schools by 5%. They can tell us what will be taken out

as a result of the creation of ESA and that we will save £15 million or £20 million, but we cannot see where it will go back in, and that increases the disparity between where we and other jurisdictions are at.

667. I have one other query on the issue of the difference between “attainment” and “achievement” in clause 38. One of your colleagues, in its submission, said that the amendment should be made to give legislative cover to boards of governors to contextualise policy and administrative directive in line with local circumstances. That was the Irish National Teachers’ Organisation. Your paper raises that issue. If you do that, is there a risk that it would become a charter for schools to excuse poor performance? I understand what is being said, because you cannot just go in — it is back to the high-jump scenario — and blandly say, “This is the standard and, if you do not meet that standard, you are failing”, because there may be other elements, such as a very high percentage of special needs in a school. If you have not put the adequate resource into that school to help the teachers ensure that everything is being done, there is a risk that that will have — and it clearly has in some schools — a knock-on effect on outcomes. That is one element. The other element is: have we been able to satisfy ourselves that setting five GCSEs from A* to C is the sacrosanct measure that everybody should be judged against? Trevor and other members of the Committee have gone round this one on a number of occasions in relation to the added value and how it is measured. That is what worries us around where we go with some of these things.
668. **Mr Dolan:** Those are valid points, but it is not about a charter. We are not looking at any charter so that a school can hide its failure. We want a fair and level playing field, not comparing schools in very different circumstances. You see in the media, for example, that although we do not, in theory, have league tables, the papers tend to create league tables and not take account of context. It can

- be very demoralising to some schools that are doing excellent work, just as good as other work, but the league table will indicate that there are these schools — they use the word “top” about them, and so on, in the paper.
669. A school could have a deprived level of special educational needs and other factors. We are not looking at that not being inspected or promoted; we are not against the board of governors promoting high standards. What else would a board of governors be there to do, really, but to make sure that the school is a good school? I am not opposed to that, but just to make it fair and level.
670. **The Chairperson:** Some of those journalists are present today, so it is a good opportunity for you to have a word with them. I know they were listening. *[Laughter.]*
671. **Mr Dolan:** It was kind of tongue in cheek.
672. **The Chairperson:** What always worries me or intrigues me is — and I have gone to schools that have high levels. The previous Committee did an inquiry into successful post-primary schools, and we deliberately chose those schools that had above 20% of pupils on free school meals. Yet in those schools, we found some outstanding examples of very good schools. So, in a sense, it can be done.
673. I am interested in what was said by a number of contributors, and we will need to do more work in our own minds around the definition. Definitions in Northern Ireland or any jurisdiction will determine people’s attitudes and actions. Whether it is “attainment” or “achievement” could have a real implication for boards of governors or the general well-being of the education system. So, thanks for that.
674. **Mr Kinahan:** Thank you very much, and I am sorry to have missed the beginning, but I read what was there. I want to ask a similar question to the one I asked previously. You commented on the make-up of the board, and here you are talking about voluntary grammar schools, grant maintained and Irish. Will you comment more on the different ways you feel the board should have been made up?
675. **Mrs Majury:** Again, we would very much follow the NITC view. The board is vital for moving ESA forward, and what it needs is more educationalists. I completely agree with Gerry that we could look at reducing the number of trustees and transferors and put in more people from schools and education who work on the ground with the children and communities. They are the ones who are best placed to inform how ESA goes forward. Of course, Northern Ireland is Northern Ireland and all sectors have to be represented. If we can actually do that through the schools, it is possibly a better way of doing it.
676. **Mr Lunn:** On the question of attainment/achievement, what the clause actually says is that the board of governors should promote:
“the achievement of high standards of ... attainment”.
677. It seems to me that if that was the other way around, it would make more sense. If it said that it should be promoting the attainment of high standards of educational achievement, maybe that would satisfy everybody, but that is for another day.
678. Clause 16 paragraphs (5) and (6) refer to only the use and management of the school grounds and property. They are very specific in what they refer to. The bit you are concerned about is the enforcement of by-laws. I can clearly understand why a school, or ESA in this case, should be able to apply by-laws to the use of school property. I am thinking of people playing golf on the playing fields, for instance, or the use of alcohol. There is a whole range of stuff. Councils cannot do that on private property, so somebody has to be able to do it. Do you not think you are getting over-excited about that?
679. **Mr Dolan:** No. All I pointed out was that no one has raised the issue elsewhere. We are unclear. I took advice from our solicitor, but I did not get much clarity there either. It may be to keep

- the dogs off the football pitches, and we will arrest the dogs, you know? It may extend to more than that. I would just like a commentary on that from somewhere, but I have not had it.
680. **Mr Lunn:** We have the right man here today. He will talk to us about that shortly.
681. The first item in your paper is about encouraging and facilitating various types of school. Obviously, I agree with you about the integrated sector. Chris has already told us that the same wording is already in the 1989 order, so it does not need to be changed. Some of us may think that it would not be a bad idea if it was just brought up to date anyway to promote a sort of equality. Why do you think that faith schools and, by implication, controlled schools need to be encouraged and facilitated?
682. **Mr Dolan:** It is about the idea of a level playing field for all our schools. The Department has a duty to encourage and facilitate some sectors but not others, and that strikes us as unfair.
683. **Mr Lunn:** Those are new sectors; they were created fairly recently, in modern times. That wording, I imagine, was put in at the time they were created, for a very good reason. Frankly — I will not speak for the Irish-medium sector — the Department has signally failed over the years to carry out that requirement for the integrated sector. I cannot quite see the equality between controlled schools, faith schools and those two minor sectors.
684. **Mr Dolan:** I am just putting it in the context of parent choice. That is where I see the equality issue arising. I am fully aware of why it was in the 1989 order and why this is here. It would not be fair to create a system in which other schools — I have referred there to faith schools — are in some way lesser or are deprived in some way.
685. I was a principal of an integrated school, although I am not wearing that hat today, and I know that article 64 was not worth the paper it was written on. This may well not be worth the paper it is written on either. Will it get as much attention as article 64 of the 1989 order got?
- It threw some money to the Northern Ireland Council for Integrated Education, and that was that.
686. **Mr Lunn:** Yes, well, I am delighted to hear those words.
687. **Mr Dolan:** That was probably a very personal point of view.
688. **Mr Lunn:** It is in the Hansard report.
689. It is not in your paper, but there was considerable discussion earlier about the role of the Education and Training Inspectorate (ETI). Do you have a view on that? Do you think that it is heavy-handed, or do you think that the Scottish model has merit? Should we be learning from other jurisdictions?
690. **Mrs Majury:** NAHT is trying very hard to establish a new working relationship with the inspectorate. An inspection system should be something that celebrates excellence and addresses concerns. However, in recent years, the inspectorate has lost its supportive side. A visit from the district inspector used to entail a chat about what you were doing, and they gave you suggestions about to take ideas forward and, because of their vast experience, other schools that were doing something that you were trying to do very well and that you could maybe link in with. That side of the inspectorate has been lost, and we are keen to get that back.
691. That is included in the Scottish model. We want to bring more support into the system. Of course there has to be accountability, which is absolutely central. However, with accountability, there has to be some degree of support. The inspectorate goes into all our schools, so it has a great oversight of what is going on in Northern Ireland and can point schools in the right direction when they need that little bit of guidance. At the moment, that is sadly missing.
692. **Mr Lunn:** That is fair enough. I cannot express scepticism about what Gerry and John said about the inspectorate and, at the same time, not listen to the views of teachers, which is what I was

- explaining earlier on. I cannot have it both ways. Chairman, we maybe need to have a closer look at the role of the inspectorate and what is in the Bill as a major point for discussion.
693. **Mr Dolan:** I agree entirely.
694. **The Chairperson:** In relation to the point that you made about the 1989 order not being properly fit for purpose in relation to integrated schools. It has had the intended consequence of creating a disparity in the funding mechanism that is used, and there is a clear inequality. Let us take it out of the integrated sector, but a sector or educational system has access to funding, because it happens to be a particular type of school, which is not open to other types of school. In my constituency, that is a bugbear of other schools that see a particular school having access to funding that ends up, in transport terms, with children being brought from a wide area to that school, and an access restriction is then placed on them. The integrated sector will say that that is because it is the nearest school that it has, particularly if it is a post-primary school. However, you could still argue that there is an issue. I would love to see whether this playing field exists, because I doubt whether it ever was made. We all talk about a level playing field, and every one of us goes away and has our own pitch and say that we will play on this pitch but we also want to make sure that there is a level playing field for everybody.
695. **Mr Lunn:** It is parental choice, Chairman.
696. **The Chairperson:** If it is to be parental choice, everybody surely needs to be on the same level.
697. **Mr Lunn:** It is about a shared future and cohesion, sharing and integration. The way forward.
698. **The Chairperson:** I was actually asking Aidan, but I appreciate your comments, Trevor. *[Laughter.]*
699. **Mr Dolan:** It is about parental choice. If something in this continues to create a lack of levelness, that is not fair,
- whether it is about representation on the board of ESA or in particular ways of encouragement. We have leaders in all sectors, and our members' point of view is that we support parental choice.
700. **Mr Rogers:** You are very welcome. I declare an interest as a former member of NAHT. We are not only on different pitches, but, at times, we play to different rules. ESA came around to create a more efficient and effective schools system and to raise standards. Gerry used the words "command and control" earlier, and that will not do anything to raise standards, thinking particularly of the leadership. In a recent inspection report, ETI talked about the problem of a lack of self-monitoring and evaluation being embedded in schools. We know that, to enhance and develop leadership, that needs to be embedded in the classroom, in the Department and at school level. Are we saying that what we see at the minute in ESA is restricting the role of good leaders in raising standards?
701. **Mr Dolan:** I really hope not, Sean. That would be such a disappointment. We have been assured again and again by people in the ESA implementation team and the Department that the point is to free up schools, to increase autonomy and to allow schools to take charge of their own affairs more than they have done. The self-evaluated model is at the heart of that, where a school will look at its own strengths and weaknesses and identify a plan and a way forward. Nearly everybody is in agreement about that. The training, which is crucial to that self-evaluated model, seems to be a command-and-control approach and runs counter to what the permanent secretary and the chief executive designate of ESA say, which is that it is to maximise autonomy and accountability. We support that model and, if something in the Bill runs counter to that, it needs to be taken out.
702. **Mr Rogers:** Do you believe that RTU's role will be enhanced as part of this new ESA body?

703. **Mr Dolan:** Enhanced? We are back to semantics. Let us hope so. It needs to be better in some areas. In some of the RTU programmes, such as the professional qualifications for headship of a school, a lot of support comes from the people who have done it. The key point from our association is that it needs to be bottom-up and not top-down; not some group of former people, who are now removed and at a distance from schools, but people who are serving in schools who can say what menu should be available to schools, and so on. Does that answer your question, Sean?
704. **Mr Rogers:** Yes. I like the idea of bringing current leaders and teachers into the process, so they are more actively involved in what is going on.
705. **Mr Dolan:** We have been saying that for a long time, and not only in the training end of education, but in the inspectorate. There is a big point there. In both areas of training, CASS and RTU, associate heads used to come in and that seemed to work. However, we looked through the inspectorate and there is a dearth of management experience in the membership of the inspectorate, and then they are there for a long time as well. So the same model can apply to both. The point is that it there should be a turnover of people. They can go out, do a number of years as an inspector, go back into school, go out and do a number of years as a trainer and then go back into school again. They could revolve like that, rather than have the current system, which makes you wonder whether they have no reality at all. Have they been in schools lately?
706. Chair, you mentioned going out to look, going out last week and going out again. That is exactly what is needed. Mr Lunn mentioned getting the views of teachers. Clare has mentioned that as well. You need to seek the views of teachers and the schools. We want schools to be good, and we do not want to be making charters for underachievement. We love and support our schools and we want them to be the very best that they can be. I do not know a head teacher in the land who is not like that. There may be a few, but there are not many. We are driven with a passion; it is a vocation. Let us bring that passion and vocation to these processes, rather than sort of feel that we do not know and that this has to be imposed upon us.
707. **Mr Rogers:** You are also saying “Give us some flexibility”.
708. **Mr Dolan:** Local flexibility is in that.
709. **Miss M McIlveen:** I preface my remarks by declaring an interest, in that I sit on the boards of governors of two primary schools. As head teachers, you obviously work very closely with your boards of governors and there is a lot of discussion about increasing the accountability of boards of governors in relation to attainment, as you have discussed. Do you think that that will cause a problem in the relationship between governors and staff?
710. **Mrs Majury:** Not so much between governors and staff, because in schools where governance works well — and I speak as head of one of those schools; I would be absolutely lost without my governors and they are excellent — the relationship is good.
711. I think that the problem lies with governors, and governors in the future. You cannot forget that they are lay people and that they give their time freely. As a governor, you know that there can be an awful lot of work involved. If we increase the responsibility and accountability of boards of governors, we are going to find it very hard to get governors in the future. We need to acknowledge that governors play a vital role in our schools. We need to keep them, but we need to make the system workable. Also, from the school's point of view, it can sometimes be very difficult if governors do not avail themselves of training. Training is offered to them, but one has no way of saying that they have to go. That creates all sorts of issues when you look at increasing the responsibility of boards of governors. I think that they have huge responsibilities as it is.

712. **Miss M McIlveen:** Should training be made mandatory?
713. **Mrs Majury:** It is very hard to make something mandatory for a voluntary position.
714. **Miss M McIlveen:** Given the level of responsibility that a board of governors has, should mandatory training not be a part of that role?
715. **Mr Dolan:** We do not have a particular view on that, and we can only give you our opinion. In things like employment, where there are huge responsibilities, or the dismissal of staff, the idea that a volunteer, amateurish group would make those decisions is difficult. You need to be trained in fair employment law. In fact, if you go to a tribunal, are asked whether you have received any training and you say “no”, you will probably have lost already.
716. **Mrs Majury:** Also, if you are requiring governors to go to something that is mandatory, will you then have to move towards paying governors? There is a limit to how much you can ask someone to do in their free time. Governors should absolutely be trained, but it varies from board to board and from school to school.
717. **Mr Dolan:** The chair of ESA is going to be paid something like £33,000 a year, and there is a board; I think there are payments. Chair, you would probably know better than me how whether there are payments for the board members of ESA. Will that eventually extend to schools? You would not want the budget to be dissipated in that way.
718. There are big tensions in increasing the roles of governors. To take the example of fair employment, governors need to be trained. You cannot have amateurs doing that. Governors are well meaning and well intentioned, which is good. However, they need to know the law. Child protection is another one. You could not have them not knowing the requirements, their own position, the Nolan principles, and so on. You declared an interest at the start of your point. You knew to do that, but a governor may or may not know that. They need to be trained on even that little point to make sure that they declare an interest if one should arise.
719. **Mrs Majury:** I am also a governor, and it is a difficult job. I am speaking as someone who came from education and then became a governor in another school. If you come from outside education with a different skill set, it can be difficult to fully grasp what schools do.
720. **Miss M McIlveen:** In saying that, diversity on a board of governors is, obviously, incredibly valuable.
721. **Mrs Majury:** Of course. My governors are very diverse, and I have governors with legal experience and economists. That really enhances what we do in our school, and that would be the same in most schools.
722. **The Chairperson:** Thank you. There are no other questions. I appreciate your time, your presentation and the paper you submitted to us. You raised a number of issues about clause 51, for example, which deals with the functions of CCEA. We will have to look at those points when we look at CCEA and the inspectorate in the Bill. For the meantime, Aidan and Clare, thank you very much. No doubt, we will have further discussions in the future.

28 November 2012

Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
 Mr Danny Kinahan (Deputy Chairperson)
 Mrs Brenda Hale
 Mr Chris Hazzard
 Mr Trevor Lunn
 Miss Michelle McIlveen
 Mr Sean Rogers
 Mr Pat Sheehan

Witnesses:

Mr Frank Cassidy *Association of School
 and College Leaders*
 Mr Scott Naismith
 Ms Deborah O'Hare
 Mrs Janet Williamson

723. **The Chairperson:** I welcome representatives of the National Association of Head Teachers (NAHT).
724. **The Committee Clerk:** It is the Association of School and College Leaders (ASCL).
725. **The Chairperson:** Sorry. My apologies. It is the Association of School and College Leaders. A real panic set in at the end of the table. You are very welcome. Thank you for taking the time to come to see us and for giving us your submission. I will ask you to make your presentation, and Committee members will then have the opportunity to ask questions.
726. **Ms Deborah O'Hare (Association of School and College Leaders):** By way of a general introduction, we represent the school leaders of virtually all the voluntary grammar schools, a big proportion of large integrated schools, a significant proportion of controlled schools and some maintained schools. I gave you that information just so that you can have an understanding of what we do.
727. With me today are Janet Williamson from the Royal Belfast Academical Institution (RBAI), formerly the principal of Antrim Grammar School; Scott

Naismith of Methodist College Belfast, formerly the principal of Regent House Grammar School; and Frank Cassidy, our regional officer and a retired principal of a maintained school. I am the principal of Wallace High School and formerly of Portadown College. Uniquely, the three principals here have been principals of controlled and voluntary grammar schools, so, hopefully, we can give some insight into that.

728. Although we are here to represent all our members' views, we have very grave concerns, particularly about the status that the Bill will give to voluntary grammar schools. Put simply, the definition of a voluntary grammar school for us is that the board of governors is the employer of the staff. That, combined with the fact that voluntary grammar schools will not have a representative body in the Education Bill, raises suspicions about the motives behind parts of the Bill.
729. Scott will present on the centralisation of the system and the removal of power and authority from school leaders and governors. I will discuss front line funding and our concerns about excessive bureaucracy, as we are concerned that the Education and Skills Authority (ESA) was supposed to be about raising standards and providing undelegated authority. Janet will then talk about the control of premises and funding for preparatory departments. So, I will now hand over to Scott.
730. **Mr Scott Naismith (Association of School and College Leaders):** At the very beginning of our submission, we made it clear that when ESA was first discussed and vaunted, one of the major concerns for all our members was that it promised maximised delegated autonomy for schools. In principle, most of our members are in voluntary grammar schools, but some are in the controlled sector. Reference was made

- to that in the Bill and in discussion, but we are concerned that the detail in the clauses does not guarantee it. Although some powers will come down to schools, voluntary grammar schools in particular will have some of their power and authority taken away from them.
731. Some clauses will potentially offer very far-ranging and sweeping powers to the Department and to ESA. Clause 4(6) in particular will give the Department what appears to be unfettered power to produce regulation that makes provision for the form and content of employment schemes. Clause 22 states:
- “ESA may do anything that appears to it to be conducive ... to the discharge of its functions.”*
732. I have a contract of employment at the end of which it says that the governors can ask me to do anything that is reasonable. If my contract, and, indeed, that of all the teachers in the school, were changed to read, “Anything that appears to be conducive to the discharge of its functions”, that would be a fundamental shift, and they could ask me to do anything at all. That appears to be what the legislation at the moment is offering ESA. The power to do anything is far too wide, and there needs to be some form of check or balance. The structure of the clause needs to be changed. It would be far better if it read, “Reasonably necessary for the discharge of its function”. You are opening up the potential for schools, ESA and the Department to be in conflict over a range of fundamental issues that are based on ideology or educational principle rather than just the function of the school.
733. The other issue, which Deborah referred to, is the inherent conflict throughout the Bill between ESA being the employer of all members of staff in all schools and voluntary grammar schools having boards of governors who employ their own staff. You will be fully aware of the heads of agreement and that, under paragraph 10 of that document, it was promised that that issue would be resolved. However, there is nothing in the legislation that responds to that particular concern.
734. So, we are faced with a Bill that, if it comes into existence, will do a lot of good and has the potential, in the future, to serve our pupils well in school. However, at the moment, some clauses are far too open-ended. We would prefer those to be scrutinised much more closely, for checks and balances to be written in, and for the tension between whether ESA is the employing authority or whether voluntary grammar schools will retain that authority to be resolved.
735. **Ms O’Hare:** I will talk about front line funding and our concerns about excessive bureaucracy. Again, these are our concerns and suspicions about elements of the Bill and about the lack of clarity on how savings will be made. It was, and is, our understanding that the Bill is meant to raise standards and provide for delegated authority. We cannot see or understand how that will really happen through the Bill. As an association, we have raised that previously.
736. Our primary concern is the funding that reaches the classroom. Statistics and data can certainly be difficult to navigate, but they are easy to spin. We have access to information on front line funding in England. When you are at a conference, an easy question to ask another school leader is, “How is your sixth form funded?” We know for a fact that some schools in England receive 25% more for a sixth form student than those in Northern Ireland. If we are to be held accountable for outputs, as we rightly should be, we ask that there be a clear understanding that is shared with everyone about input and about what is reaching the front line so that that can be measured. It is very unclear at the minute.
737. I will now hand over to Janet, who will talk further about premises and prep schools.
738. **Mrs Janet Williamson (Association of School and College Leaders):** The two issues that I would like to raise

are premises and prep schools. I know that prep schools were not mentioned in our original consultation response. Regarding premises, the concern for voluntary grammar schools is that they have had a long tradition and legacy of managing very successfully their school estates. Voluntary B schools, such as Inst and Campbell College, own their land, all the capital and all the property. Therefore, we envisage a potential tension in the role of ESA, as stated in clause 20(1), to:

“enter into contracts for, or in connection with, the provision or alteration of the premises”.

739. That would significantly change the way in which those schools are organised and run. We request that any change be done in consultation with and with the consent of the voluntary B schools’ boards of governors. I again draw your attention to the unique position that those schools have in the voluntary sector.
740. We would like clarity on where the prep schools will fit into ESA. What will be the prep schools’ employing authority? Will it continue to be the main school to which they are attached, given that they are normally seen as a department of the main school and not as a separate school? Will the funding then continue for prep schools?
741. **The Chairperson:** Thank you. Frank, do you want to make any comment?
742. **Mr Frank Cassidy (Association of School and College Leaders):** No, I am happy enough.
743. **The Chairperson:** OK, thank you. There is a sense of, “Here we go again.” with this. I can think of other organisations that will come in on another issue on which they will be very focused. The fundamental issue with the voluntary grammars is that they have cherished, and rightly so, the autonomy that they have had. When the now Education Minister was on this Committee in the previous mandate, I think that I can remember him making a comment to your colleagues from, I think, the Governing Bodies Association on the day that they came in. He said, “But you take state funding, so why should you not be held accountable?”
744. That is the case. You receive, I would reckon, 99.9% of the funding that goes to your school in resource and capital. However, you are also held accountable because you are scrutinised. Maybe it would be useful to clarify how different you feel that regime is for you as opposed to, say, that for a controlled or maintained school either under the Council for Catholic Maintained Schools (CCMS) or an education and library board.
745. **Ms O’Hare:** I am happy to talk about the differences between working as a principal in Portadown College and Wallace High School. The thing that struck me was just how rigorously audited a voluntary grammar school is. When I was principal of Portadown College, I dealt with the education and library board. Obviously, there were checks and balances. I asked for permission to do things, and they were signed off. When the auditors come in, they do a significant piece of research. They go into every nook and cranny looking not just for financial issues but policies, and they go right through the performance review and staff development files. As far as public accountability is concerned, in my opinion as a principal in a voluntary grammar school, I think that it is much sharper than it was in a controlled school.
746. I did not see what scrutiny the education and library board was coming under when an audit was carried out, but you can see that in very sharp terms in a voluntary grammar school.
747. **The Chairperson:** There seems to be an attempt to say that a certain number of schools in Northern Ireland have been run as almost independent schools that are separate from the system and the state and that somehow everything that they have done has been away from the glare of public scrutiny. That is not the case. Do you want to expand on that just so that we are clear? Any evidence or additional information that you can supply to the Committee would be valuable and worthwhile.

748. **Mr Cassidy:** One thought that we discussed was that the Minister has talked about the fact that public money, as you pointed out, funds our education system and that, therefore, the responsibility is for politicians and the Department of Education to decide what schools we should have and what they should be like. We acknowledge our accountability to the public purse. However, one of the unique features of the Northern Ireland system is the schools' responsiveness to local circumstances. The success of the voluntary grammar schools is down to the fact that they are responsive to their context. That is why they have continued to enjoy huge parental support. In spite of the conflict about the selection system, and despite all the difficulties, the voluntary grammar schools are the places to which people want to send their children. That is because they respond to what people want and need. So, a fundamental question here is: do we want a system where it is decided from a central point what everybody is going to have, or do we have a system that responds to local context and needs, which is what the voluntary grammar schools currently do?
749. **Mrs Williamson:** May I come in on the issue of the rigour that is applied to premises and capital? I think that there has been a huge saving for the Department of Education in circumstances where voluntary schools fund their own capital bills. Having been through a refurbishment and redevelopment programme at Antrim Grammar School, I have found that the process is very efficient in the voluntary sector. Everything has to be tendered for. There is a very rigorous process, all of which is audited, and in comparison with what I experienced at Antrim Grammar School, significant savings meant that you were not given the same flexibility or freedom to go back to renegotiate on prices, for example, not just for the building and the products but even down to the cleaners. I look at the efficiencies that we have in the cleaning of the school and how much it costs for each person in comparison with a controlled school. I have found that it is much more flexible than it was in the controlled sector. It was a positive experience for me in the controlled sector, compared with the experiences of other colleagues. However, we are making more savings, and, as I said, everything still has to be tendered for.
750. **The Chairperson:** Scott referred to the original Bill. There was always a lot of talk about the maximised delegated autonomy of schools. In your own experience, and coming from where you come in the day-to-day practical running of your school, what do you see as the best model? Obviously, Janet has had the experience of being at a controlled grammar school as well, which was under the authority of the board. What do you think needs to be changed or amended in the Bill to give you that degree of autonomy? We talked about a level playing field. Some of us doubt whether such a pitch has ever been built. I have no doubt that there are schools in my constituency that would love to have the degree of autonomy that you have, but because they are under the board, they do not have that. You are now worrying that you will be put under ESA, which is the equivalent of being put under a board, and that you will lose that autonomy.
751. For those schools that want that degree of flexibility and autonomy, what would need to be changed in the Bill to give it to them? I realise that there will be schools out there that would say "Sorry, that is not for us. We are quite happy to use ESA as the organisation to do all those things."
752. **Mr Cassidy:** In my role as regional officer for ASCL, I get called into schools when there is a problem. Very often those are employment-related or legal issues or conflicts between employees or between parents and the school or the principal, and so on. So, I see what can happen when things go wrong in a school. I deal with integrated, controlled, maintained and voluntary grammar schools. My experience over the past year or so has been that the complexity that is involved in working with a

- board, CCMS and the school board of governors further complicates already difficult issues.
753. When you are in a voluntary grammar school setting, the resolution of legal employment disputes and so on, is much more straightforward because there is a direct relationship between the governors and the complainant. The argument has been used that centralised legal services, for example, offer specialised help to schools that they could not get from other places. However, the voluntary grammar school experience has been that you do not need to have a lawyer on salary 24 hours a day, 365 days a year. You buy them in when you need them. A problem might come once every couple of years, for example, and you get specialised help and efficient productive solutions at the time. My personal experience has been that complexity with various centralised bodies adds to the difficulty of making education work effectively.
754. **Mrs Williamson:** For me, the most significant difference between the controlled and voluntary sectors is in employment. If we have a gap, we can advertise the next day. We can move very quickly to make appointments. Also, there is freedom and flexibility for governors to appoint vice-principals and principals. I am not a big fan of the teaching appointments committee (TAC), because I think that it takes away from a school's governance. Scott may want to say something more about the comment in the ESA Bill on specified posts, which needs to be clarified. My biggest observation about the controlled sector concerned the flexibility and the speed at which you could move on employment.
755. **Mr Naismith:** That flexibility is the key point. I have been involved in the voluntary grammar sector and the controlled sector in Northern Ireland. I taught in the independent sector and in the state sector in Scotland, so I know what it is like to have full autonomy. In my mind, that is the best model.
756. We are consulting on the content of the curriculum in an attempt to put into practice the Minister's entitlement framework. However, if you want to be responsive to the pupils, you have to look at what the pupils want and at the gaps in your provision. You can manoeuvre and employ staff in the voluntary grammar sector and have the flexibility and the quick turnaround to allow you to do that. However, the time that that takes in the controlled sector just makes it prohibitive.
757. The other issue, as Janet said correctly, is about paragraph 3 of schedule 2 to the Bill, which gives ESA control over appointments to specified posts. We raised that as a concern with the Minister at the ASCL conference and asked him to define "specified". His answer was that he did not know what "specified" was.
758. We would like that to be clarified before the Bill is enacted because, at the moment, "specified" could relate simply to the appointment of principals and vice-principals. In the future, however, it could be defined as every single member of staff in a school. Again, if you are talking about delegated autonomy, the potential is there at the moment for all appointments to come under ESA's control.
759. I completely agree with you. I was at Regent House School when ESA was first mooted. We were delighted because it was interpreted and promised at that time in discussions with Gavin Boyd and with MLAs that it was going to move all schools towards the voluntary grammar model. That got a unanimous vote of support from all the post-primary principals in the South Eastern Education and Library Board area.
760. **Ms O'Hare:** The idea that a one-size-fits-all employment system will add value to schools is a concern of mine. Frank made a point about legal advice. As a voluntary grammar school principal, I know that it is really useful to be able to take specified legal advice when you need it rather than having something that is much more generic. It is the

- same with general employment issues. We can find the right person for the right post for our school at that particular time. The governors, the principal and the leadership teams of schools know what those needs are because they understand them intimately. I am concerned that if we had a much more generic approach to that and did not have that autonomy, our efficiency and effectiveness could suffer.
761. **The Chairperson:** What are the daily outworkings of that? The union representatives were here earlier, and their view of the world is that everyone should be treated the same. Do you believe that one of the values of having the autonomy that you have is the ability to set a salary regime that is reflective of the type of person that you want? Do you believe that it is more attractive to a teacher to be employed in a voluntary grammar than in any other sector?
762. I think that there is an attempt out there to create a myth that, somehow, you are able to line the inside of the pocket better because you have that power and that that is the reason why you are getting better teachers and better outcomes than schools down the road, for example.
763. **Mr Cassidy:** Definitely not.
764. **Ms O'Hare:** Definitely not, no. We cannot do that. I wish.
765. **The Chairperson:** I am playing devil's advocate here because I just wanted to get that sort of response. I just wanted to hear it from you so that the Committee is clear.
766. **Mr Cassidy:** Our funding concerns are to do with the breadth of the curriculum and the range of subjects that we offer, not how much we pay each teacher. We like the fact that there are universal salary and pay and conditions arrangements for all teachers; that is fine.
767. **The Chairperson:** Do you come under the Jordanstown agreement?
768. **Ms O'Hare:** Yes.
769. **The Chairperson:** We need to note this for Chris later on. Are there any proposals to change the Jordanstown agreement? He says no; he is shaking his head. You are saying that there probably is, then; that is not fair.
770. **Mr Cassidy:** Some of the potential benefits of the ESA Bill are the universality of policies, procedures and official documentation, and we welcome that.
771. **The Chairperson:** That is in employment law, which goes across all the sectors; it does not know any distinction between any sectors.
772. **Ms O'Hare:** The key issue is who the employer is.
773. **The Chairperson:** That brings me to my next point. There is a provision in the Bill to be able to change employment laws. I notice that you did not refer to that in your submission. Do you have a particular view on that?
774. **Mrs Williamson:** Our board of governors considered that, but its view is that if the law is the national employment law, they have to be compliant with it.
775. **The Chairperson:** Clause 13 deals with the modification of employment law, and you would obviously have a view or a concern about that because:
"The Department may by order make such modifications in any statutory provision relating to employment, and in particular in any statutory provision".
776. I suppose that that would depend on the circumstances or the nature of the change.
777. **Ms O'Hare:** I suppose that what and why would be unclear in that.
778. **The Chairperson:** I have one more query that I would like clarified about paragraph 10 of the heads of agreement, which says:
"There will be no transfers, secondments or redeployments of teachers without the consent of the respective schools, Boards of Governors or teachers involved"

779. Just before I came here this morning, I heard about a report that came out in England, which said that a teacher had been taken out of one school and put into another, which has made progress. I think that there is a view, possibly in the Department, that the way that you resolve underachievement in a good teacher/failing school is to take a good teacher out of what is a successful or good school at the moment and put them into a failing school. The idea is that that school would then improve. What is your view on that as a rationale and as a way of addressing underachievement, problems or difficulties?
780. **Mr Naismith:** I have a couple of comments to make on that. First, we already form collaborative arrangements and do outreach work with any school that is successful and that has staff, or pupils, indeed, who could be of benefit to other schools. We would be happy if someone were to approach us with a view to sharing good practice or to having leaders or a teacher in a school shadowing and sharing good ideas. I have no problem with that. We would always be open and receptive to looking at such strategies if they improved the educational service to children in Northern Ireland. However, the idea of identifying a teacher who is good in one particular school on the principle that a teacher is universally good, no matter what the context, is misdirected. It does not necessary hold that one teacher who works very well in one educational environment will do so in another.
781. I will go back to my time teaching in Scotland, where I experienced two schools at the opposite ends of the social spectrum — one in the private sector and one in the state sector in an area of extreme deprivation. I saw excellent teachers in both schools and adequate and poor teachers in both schools. However, I know that if you took the excellent teachers from one school and put them in the other school, you would see that they would not be as effective. It is too simplistic a solution. However, I am open to the idea of approaching schools to see how they could collaborate or share good practice that works in both directions.
782. **Mr Cassidy:** I suspect that that idea might be coming from the direction that, in area learning community settings in the future, the distinction between separate school campuses could become less defined and you would end up with children being educated more jointly, or there could be some fusion between authorities of boards of governors, as well as amalgamations and rationalisations. It might make this process easier if there were more universality of employment structures and freedom to move teachers around. However, on the other side of the coin, the loss would be that schools are successful because they are organic communities with shared values and loyalties; moreover, putting together a cohesive set of staff, parents and pupils is an art form, and that is the key to why voluntary grammar schools, in particular, are so successful. It will not be easy to lift teachers out of one setting, put them into another and magically make it better. We have made suggestions to the Minister, and we hope to engage with him further. He was kind enough to say at our conference that, as a group of school leaders, we had great expertise to share with other sectors. Indeed, we welcome that opportunity. We want to look at how leadership development is organised in Northern Ireland, and by all means, ASCL would be willing to get involved in sharing, mentoring and in trying to improve the system from that point of view. There would be a great deal of unease about the universal movement of teachers from campus to campus at will.
783. **The Chairperson:** Do you take the view, collectively as representatives of that body — it has various facets — that the success of a voluntary school is more than that it happens to use academic criteria as an admissions policy? That is not the purpose of the Bill, and we will not go there; that is a debate for another day. However, setting that aside, there is more to what constitutes and is

- at the heart of a voluntary school than that.
784. **Ms O'Hare:** Absolutely.
785. **Mr Kinahan:** I have two questions, although you have covered one of them. The first is about the lack of voluntary grammar representation at the top of the ESA board. Do you see a way that CCMS will have voluntary grammars in its grouping, whereas you do not in the other sector? How will we ensure that there is no doubling-up?
786. **Mr Cassidy:** I want to clarify: CCMS does not represent Catholic voluntary grammar schools and has no contact with our jurisdiction.
787. **Mr Kinahan:** OK.
788. **Mr Cassidy:** Catholic voluntary grammar schools exist on the same basis as Methody, Wallace and Inst; CCMS controls the maintained sector. That is a very worrying assertion.
789. **Mr Kinahan:** That is what I was told by many sources.
790. **Mr Naismith:** The Governing Bodies Association is the group that best represents the sectoral interest.
791. **Mr Kinahan:** We have been discussing the collaborative approach, and I have been to many meetings where you have been criticised for not sharing enough with the other types of schools or taking all the resources so that the nearby secondary school loses the top pupils and struggles to get them higher. I liked your approach, but do you see a way of getting the Bill back to what the previous ESA Bill was so that we end up modelling it more on the voluntary sector? Can you see a way forward for that?
792. **Mrs Williamson:** We would welcome representation on ESA so that we can contribute more effectively to the debate, to discussions and to any potential amendments. We would work to dispel myths and to collaborate, and we are all doing that in our area learning communities. In fact, we have been proactive and have been either in charge of them or acted as vice-chair of them; we have also been doing a great deal of outreach. To be excluded at this stage would marginalise us from being engaged in some of the issues that you raised.
793. **Mr Kinahan:** What do you think of the route that area planning is on? It seems to me that the learning communities are having a negative effect after all the good work that you have done by pushing things into sectors.
794. **Ms O'Hare:** The public viability audits were potentially divisive. Although it is clear why that needed to happen, I am sure that, in some areas, that has been a difficult document to read and can leave schools feeling marginalised when we are all trying to collaborate more. How that is approached privately or publicly is very important if we are to be more collaborative.
795. **Mr Cassidy:** I have been involved in research with the University of Ulster into area learning communities. One of the key things that we identified — it was my own experience in Ballymena — was that successful area learning communities have to be grown locally and have to have the allegiance of the people locally. They work out solutions that work for them; you cannot impose a universal model on different areas. For example, Belfast does not have the same issues as some rural market towns. Therefore, if you are to have successful learning communities — and we should aim for that — they have to grow locally. I agree that some of the moves, particularly in the Catholic review, are pushing Catholic schools into a separate silo, and I bitterly regret that.
796. **The Chairperson:** Is there a halfway house between where we are currently at? People argue that there is an inherent contradiction between point 5 and point 10 of the heads of agreement and that you cannot be the employer and still have power over employment functions. Is there a place where you could get to whereby you would be the agent, for example, of ESA? Have you given any consideration to what we have and what is proposed? Is there a third way?

797. **Mr Naismith:** You said the agent. somewhere with the idea of a halfway house.
798. **The Chairperson:** Yes, sorry.
799. **Mr Cassidy:** The initial problem that we thought we were addressing was the fragmentation of Northern Ireland education. It costs too much for a country of this size, and it is robbing front line services of scarce resources. We would all welcome unanimity of educational administration, as we have five boards, the CCMS, as well as the Irish-medium, integrated and maintained sectors. That has to be rationalised; some sense and order have to be brought to that.
800. How we got on board with a more centralised directive approach once that entity was in place was part B. We like part A, not part B. Part A is fine, and common sense dictates that that should happen as quickly as possible. If that incorporated greater sharing in our education sector and thereby in our community, so much the better. Part B is how it is implemented and how they would administer schools. That is the problem because there were agendas running from the Department of Education, which has always had a difficulty with managing the autonomy that voluntary grammar schools enjoy. If this is the moment when it tries to kill two birds with one stone, it should try to kill just one bird and do it well.
801. **Mrs Williamson:** I will move from birds to beasts. What always worries me is having two heads on the beast. That never works because who the channel is or who will act as the agent of whom becomes very complex. The issue for voluntary schools, which have been the employing authority, is for it then to be suggested that ESA would be in charge of discipline or follow-up on certain issues. Two heads on a beast does not work.
802. **Mr Lunn:** I am on the same theme. If I were a governor or the head teacher of a voluntary grammar, I would probably wish that the ESA would just go away. At the same time, you acknowledged that parts of it find favour with you, so that is constructive. We may be able to get
803. What I cannot get my head round is your opposition to the employment role of ESA. My reading of the Bill is that you can put together your own employment scheme, although you have to have it approved by the ESA. Clause 5(4) states:
- “ESA shall approve without modification a scheme submitted ... unless ESA determines that the scheme does not comply with the statutory requirements.”*
804. Why would you want to have an employment scheme that did not comply with statutory requirements? I see no conflict there. As far as the day-to-day operation of your schools is concerned, I can understand your feeling that you are having some authority taken away. However, I do not see that in the Bill. ESA cannot interfere, for instance in the employment scheme, unless you step outside the scheme that you devised and which ESA approved without modification. Where does the —
805. **Mrs Williamson:** The case of specified posts. We have no specified posts that anybody else has authority over.
806. **Mr Lunn:** You have lost me.
807. **The Chairperson:** It is in schedule 2, Trevor, “Provisions required in employment schemes”.
808. **Mrs Williamson:** None of us could argue with your point that it is legislation and that that is employment law. However, the Bill states:
809. The scheme shall provide for the selection of a person for appointment to a post on the staff of the school to be carried out
810. (a) in the case of a specified post, by ESA;
811. No one has confirmed with us yet what that means or whom it involves.
812. **Mr Lunn:** We will be getting advice and we can address that.
813. **Mrs Williamson:** It is a sticking point.

814. **Mr Lunn:** Do you not recognise the potential value of having a backstop employer? You will have your scheme, you will be able to run your own affairs, make your appointments, largely, impose your own discipline as part of your employment scheme, and ESA cannot interfere unless you step outside the scheme. I always go back to that. It seems to me, and I have raised this query before, that voluntary grammars may no longer even have to carry certain types of liability insurance because ESA is the employer.
815. I understand your reservations: “If it’s not broke, don’t fix it” and “We have been doing this for 100 years, so leave us alone”. However, there will be an ESA; there will still be voluntary grammars — I hope that there will be — and the Chairman’s suggestion of finding a middle ground is a valid one. You have to realise that ESA is coming whether you like it or not, and it has to be worked at and made satisfactory.
816. **Ms O’Hare:** Can I turn round your point about employment and ESA being the employer and our schools being allowed to have their own employment schedules? To bring it back to finance and funding, we do those things already, and, we contend, we do them efficiently. Therefore, why pay? Why should money be absorbed into a system where voluntary grammar schools already do all those things independently? They are already the employers; why have that extra check and balance? We already do all those checks and balances, and we already adhere to employment law. Why have that extra superpower to check all that? Is that your point, Trevor? I am not sure that it is. I am just turning your point around: we already do that and we do it well.
817. **Mr Lunn:** I know that you do it well, and I understand your point. However, we are restructuring our entire education system. It is not that I am holding out for a Sinn Féin agenda, but the general mood seems to be that ESA is a good thing; it needs to be brought in and is an enormous tidying up of the whole system. Why exclude a relatively small number of schools, however excellent? I say, include them, but do not interfere too much.
818. **Mr Cassidy:** It is not a relatively small number; we educate 45% of post-primary pupils.
819. **Mr Lunn:** I could take you up on that as well.
820. **Mr Cassidy:** We educate a huge bunch of people. We have no issue with complying with employment law. As I have already said, we would welcome universality of procedure and paperwork. That is fine. However, my experience is that dealing with an employing authority at one remove from your local situation horribly complicates what should be reasonably straightforward problems. That is just on a day-to-day level.
821. On a structural level, the freedom to decide on your staffing complement and its make-up, your approach to interviews, and how you deal with curriculum adjustments, and so forth, is what makes voluntary grammar schools successful. They are responsive to the needs of the community that they serve. Despite what you say, putting a centralised authority in the way and insisting that everything has to be rooted through it and its funding mechanism will stultify and diminish the flexibility that makes such schools successful.
822. In the area learning community that I referred to earlier in Ballymena, we were going great guns when we had our own funding and were doing things by ourselves. When the boards got involved and there were action plans, auditing, retrospective financing that was a year backlogged, and so on, it drowned the area learning community in paperwork and was an obstacle to genuine innovation and change. You want an education system that is responsive to the needs of pupils, but if you put a big block in the way, it will slow that down and people will say, “Ach, to hell; it is not worth it.”
823. **Mrs Williamson:** There is another aspect, Trevor: the air of suspicion that

- Deborah mentioned at the beginning. When voluntary grammar schools are not included in ESA and when the Bill states something as straightforward as, “The board will consult the ESA” or “the ESA will consult the board”, that makes us nervous, because we are not represented and are, therefore, again outside the consultations.
824. **Mr Lunn:** I want to make this clear: I absolutely support your right to be represented, along with certain other sectors, on the board of ESA. To my mind, its structure is not right at the moment.
825. **The Chairperson:** I always remind people of this: the board is constructed to reflect the 1986 Order. The voluntary grammars do not have representation on the education and library boards because they were not involved in the process in the 1940s with the education committees, which eventually became the education and library boards. There has always been an issue around the legislative position of the controlled and maintained sectors. That is the reason.
826. The gentleman to my left has always told me that there are certain things that we can and cannot do. We have got to a point where we can construct the board as it currently is, but now other organisations are asking, “Should we be part of the board?” or “Could we part of the board?” That is opening up the discussion. Organisations such as yours need to be clear about whether that is what you want. On the one hand — I am playing devil’s advocate here — you are saying, “We want autonomy”; on the other hand, you are saying, “We also want to be part of this organisation”. If you had to choose between retaining your autonomy or having a place on the ESA board, I could take a stab at which one you would go for. You would not want your place on the ESA board. Is that not right? You would retain your autonomy.
827. **Mr Lunn:** Chairman, the fact that they want a place on the ESA board is, to my mind, recognition that there is an inevitability about this. You may as well be inside the tent rather than outside it.
828. **Mr Naismith:** I go back to Trevor’s original point about the schemes of employment and that there appears to be nothing to fear. In my introduction, I referred to clause 4(6). It states:
- “The Department may by order amend Schedule 2 (and make any necessary consequential amendment to subsection (4)).”*
829. Schedule 2 is about the schemes of employment. It gives the Department an unfettered power to produce regulations that make provision as to the form and content of employment schemes. Therefore, the potential is there, in future, for the Department to exercise a power to insist on the same employment scheme being adopted by all schools.
830. **Mr Lunn:** I have highlighted that clause; we will ask somebody about it. I would be amazed if that was the intention.
831. **Mr Naismith:** It may not be the intention, but, as it stands, the legislation offers that power. We are all familiar with the law of unintended consequences. We have to think about 10 years, 15 years, or 20 years down the line.
832. **Mr Lunn:** OK. Do you have a view on the clause that deals with the appointment of governors who support the ethos of a school?
833. **Ms O’Hare:** My board felt that that was one of the positive things. It felt that requiring governors to support the ethos of a school was a good thing, and it was pleased with that.
834. **Mr Rogers:** I apologise because I am supposed to be at another meeting, and you know what happened yesterday when people did not turn up to meetings.
835. Janet, you said that you would welcome representation on the ESA board. Would you similarly welcome a sectoral body for the voluntary grammar group?
836. **Mrs Williamson:** Yes. I see no a conflict of interest between autonomy and representation.
837. **Mr Rogers:** Leading on from that, do you believe that something could be rolled out to protect the voluntary principle?

838. **Ms O'Hare:** Yes.
839. **Mr Rogers:** That is it, as I need to leave.
840. **The Chairperson:** On a personal level, I want to pay tribute to Frank for the invaluable contribution that he made in his previous role in the Ballymena area learning community, the Ballymena Learning Together partnership, and to all the good work that is done in Ballymena. He was the principal of St Louis Grammar School. His contribution was much valued and his presence is greatly missed.
841. The Bill refers to “attainment” not “achievement”. Is that an issue? Does that need to be tightened? If you were minded to accept what the Department says — that the purpose of ESA is to raise standards — why would the Bill refer to “attainment” as opposed to “achievement”? I think that that is in clause 16. There was a scurry there. I made you all go for your copies of the Bill.
842. **Ms O'Hare:** If I am honest, I have never —
843. **The Chairperson:** It is in clause 38.
844. **Ms O'Hare:** — really considered the difference between the two. “Attainment” probably seems slightly broader. On initial reflection, it may include extra-curricular or other skills in a young person’s portfolio of achievement. However, educationally, we tend to use those words fairly interchangeably and would not have a set definition for either.
845. **The Chairperson:** Clause 38 states:
“It is the duty of the Board of Governors of a grant-aided school to exercise its functions with a view to promoting the achievement of high standards of educational attainment by pupils registered at the school.”
846. This morning, the National Association Of Head Teachers raised concerns about the use of the word “attainment”.
847. **Ms O'Hare:** That would not be an issue for us.
848. **The Chairperson:** Is there anything else that you think would be of value to us? You have focused on what you see as the crux issue for you.
849. **Miss M McIlveen:** Janet, you mentioned prep schools. Do you feel that they are threatened by the Bill. I was involved in fighting for prep schools three years ago, and the fact that you raised prep schools concerns me.
850. **Mrs Williamson:** As people have picked at this a bit more, other interest groups, including prep schools, have asked whether ESA will be threat to them, or whether prep schools will be allowed to carry on as they are with partial funding. Prep schools are departments of main schools, and there is no reference to them in the Bill. However, if ESA becomes the direct employing authority of preparatory departments, there is a question over whether they will continue to exist. That is a concern.
851. **Miss M McIlveen:** That is something that I have been meaning to raise. Thank you.
852. **Ms O'Hare:** Employment has been a big part of what we have presented. However, to bring it back to where I started, the overriding concern for us is that we will have a very large organisation in ESA, possibly the largest such public body in Europe — certainly in western Europe. We are concerned that the efficiencies that it hopes to make will not be delivered to front line services and that we will create layers of administration that will, perhaps, be in excess of those that exist. Sitting where we sit, where we see efficiencies at a local level in our schools, that is a concern for us.
853. **Mr Lunn:** I have found the “specified post” that you were talking about. Paragraph 3 of schedule 2 states:
*“The scheme shall provide for the selection of a person for appointment...
(a) in the case of a specified post, by ESA” .*
854. I am not totally clear what a “specified post” is.
855. Paragraph 4 of schedule 2 states:
“The scheme shall provide that ESA shall not appoint a person to a post... unless -

- (a) in the case of...a specified post, that person has been selected for appointment.. in accordance with the procedures mentioned... and the Board of Governors has approved that selection”.*
856. It appears that boards of governors will have a block on appointments, even if it is one of those “specified posts”. I wish that Chris was at the table.
857. **The Chairperson:** Chris will be coming in a minute or two.
858. **Mr Lunn:** I do not know why “specified posts” is in there; we look forward to hearing about that. If it is in there, it seems that boards of governors have a veto.
859. **Ms O’Hare:** I know that Chris will highlight it for you later. However, from my experience in the controlled sector, I understood that a “specified post” was that of principal or vice principal and, therefore, TAC was involved in their appointment. That was referred to as a specified post. It had a slightly different legislative protection and framework around it; whereas the board of governors of a controlled school would have carried out the interviews independently, going through the education and library board for approval. However, the specified post was different. We are not sure what it means in this context, and that is part of the problem. We are not sure about a great many things in the Bill.
860. **Mr Lunn:** Fair enough. I wonder whether the scheme of employment, when it is finally agreed, has to include specified posts at all.
861. **Mrs Williamson:** Could we be really cheeky and ask?
862. **The Chairperson:** Yes; Chris will come to the table. He has already said that the specified post is specified by the school and not by ESA. You are welcome to stay to hear what Chris has to say.
863. **Ms O’Hare:** OK.
864. **The Chairperson:** This is being recorded by Hansard. Therefore, not only will he say it, but what he says will be recorded.
865. **Mr Naismith:** If a specified post is specified by the school, will that be written into an amendment?
866. **The Chairperson:** If it needs clarity and assurance, and we feel that that would be helpful, there will be no closed door on it. I cannot speak on behalf of the Department — nor would I — but if it is clear, Chris will clarify for us why it should not be made clearer in the legislation. The purpose of the legislation is for it to be as clear as possible and to remove any ambiguity or concern. That is how I view the process.
867. Thank you very much for your time. You are more than welcome to stay; we are not putting you out. As we have said to other stakeholders, we will continue the engagement. We look forward to working with you.

28 November 2012

Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
 Mr Danny Kinahan (Deputy Chairperson)
 Mrs Brenda Hale
 Mr Chris Hazzard
 Mr Trevor Lunn
 Miss Michelle McIlveen

Witnesses:

Mr Chris Stewart *Department of Education*

868. **The Chairperson:** I invite Chris Stewart to come to the table. We appreciate the time that the Department and officials have given us.

869. As the issue is fresh in our minds, I ask Chris to address the issue of specified posts in schedule 2 and to clarify a few points. The Association of School and College Leaders (ASCL) said that the Bill gives the Education and Skills Authority (ESA) the power to interfere in the appointment and dismissal of staff and said that “specified” had not been defined, which appears to be a reference to schedule 2(3)(1)(a), which allows for an employment scheme that shall provide for the selection of a person for appointment to a post on the staff of the school to be carried out in the case of a specified post by ESA.

870. **Mr Chris Stewart (Department of Education):** Good afternoon, members. I am happy to address that point first because I could see that it was of concern for ASCL colleagues. I was wondering where the concern came from, and then, following the remarks of one of our colleagues, I suddenly realised why. It is because of the previous use of the word “specified”, where it had a very different meaning. The key point here is that a post is specified only if it is specified by the school in its scheme of employment. The reason for that is that it is a measure of autonomy or a measure to allow the school to decide on the level

of autonomy that it wants. Therefore, if a school wishes to make all the appointments, it will specify no posts in its scheme of employment; if it wishes ESA to make some of the appointments, it will specify those appointments that it wishes ESA to make. Therefore, the default position is that if a school does nothing, it makes all appointments and ESA has no role in making those appointments and there is no teaching appointments committee anywhere in those arrangements.

871. **The Chairperson:** So, the teaching appointments committee is removed?

872. **Mr Stewart:** Absolutely. I do understand. That was the concern that colleagues had before; that specified posts were those that would have been dealt with by a teaching appointments committee, which was an anachronistic mechanism — and that is being kind to it.

873. **The Chairperson:** It may be unfair to ask you, Chris, but do you think that, to reflect that, it could be tidied up better or presented better, to give clarity and certainty in light of those particular concerns that have been raised with us?

874. **Mr Stewart:** To be fair to legislative counsel, I think that if he were here, he would say that the meaning and effect of the clauses are absolutely clear and beyond doubt. I absolutely accept that there is a job of work for me and colleagues in the Department to do, perhaps, to better explain the effect of the provisions.

875. **The Chairperson:** And you will do that.

876. **Mr Stewart:** I am happy to do that.

877. **The Chairperson:** We can then share that with the organisations that raised that matter with us.

878. **Mr Stewart:** Absolutely, Chairperson. A number of stakeholders who have given evidence to the Committee today

- have already asked for meetings with me to explain some of the provisions. That offer is open to ASCL colleagues and anyone else. The usual caveat is, of course, that I have no mandate to negotiate policy. That is a matter for the Minister. However, I am more than happy to explain the effect or the content of any of the provisions of the Bill.
879. **The Chairperson:** Obviously, the Minister could give an assurance during Consideration Stage to clarify, which would be very helpful, too.
880. **Mr Stewart:** Absolutely.
881. **Mr Lunn:** I am really glad that we got that clarification, Chris. Thank you very much. I want to follow on from that. I am not querying what you said in any way — just to complete it, if you like. I cannot imagine why, in light of what you said, any school would specify posts, but let us say that they did. Paragraph 3(4)(a) of schedule 2 says that the board of governors has to approve the selection of a person for appointment. What is the tiebreaker, then? If, in the future, in the unlikely event that ESA has to appoint a headmaster but the board of governors is not prepared to accept the appointment, who is the final arbiter?
882. **Mr Stewart:** It would be the board of governors. The reason for that particular provision is to give absolute effect to a statement that the Minister made a number of times and which members will have heard me repeat a number of times. It is that, throughout these arrangements, no member of staff will be appointed to any grant-aided school without the say-so of the board of governors. Even if a school decides to specify some posts and to ask ESA to do the heavy lifting of the appointment process, the board of governors will still have the final say — the final veto, if you like — on whether an appointment is made. That applies right throughout the appointment arrangements, even to peripatetic teachers, who would be appointed by ESA but to work in a number of schools. However, no peripatetic teacher could work in any particular school without the approval of the board of governors. So, there is an absolute commitment, which runs throughout the Bill, that boards of governors have the final say — the only say — on who gets to work in a school.
883. **Mr Kinahan:** When you look at the corporate plan and you talk about the power to remove governors and put them in — we know that, in certain cases, governors have been put into boards — that gives us a level above, which means that you may give the power to the governors but you are keeping the power to remove governors who do not fit or to put in other governors in future. In a way, the safety mechanism that you are saying is there is not there because you can change the governance.
884. **Mr Stewart:** Let me assure you, Danny, that there is absolutely no policy intention behind that for the Department to take a power to remove governors if we felt that we disagreed with their employment decisions. The particular provisions to which you refer, which are regulations that were made under, I think, article 23 of the Education and Libraries (Northern Ireland) Order 2003, are a backstop.
885. Following on from some of the comments that were made earlier, I should say that the Department absolutely recognises the pivotal role that school governors play in the education system. There are about 10,000 of them overall, all serving in a voluntary capacity and all giving up a great deal of their time, energy, skill and experience outside their normal occupations and working hours. They have a vital role; they are responsible for leading organisations that educate about 330,000 of our children and they spend whatever the agreed proportion of the education budget might be at the front line. They do all that in a voluntary capacity. The role of ESA and the role of the Department is, first and foremost, to support and enable governors to do that, and that is why a statutory duty is proposed in the Bill for ESA to provide a dedicated support service to governors to train, assist and advise them as

they go through the discharge of their very difficult functions. Only in extremis would the Department go further than that and interfere. The next step would not be to remove governors but to add governors. If a board of governors was struggling with its responsibilities and needed additional help, skills and expertise, the first thing we would do is put additional governors in. You would only contemplate removing governors if you were at the point where the school is failing because the board of governors is unable to discharge its statutory functions. That really is the very last resort. However, given the importance of that role and the importance of education as a public service, it was felt, in 2003, that it was appropriate to have that power there to be used should the occasion demand it. I do not know that the Department is contemplating, at this stage, the removal of governors in any school.

886. **The Chairperson:** Can we stay on the issue of employment and the specified posts and follow on from Danny's line? You have clarified the situation with the board of governors, but what about the dismissal of staff? If a school decides to dispense with an individual, the Bill says:

“an officer of ESA shall be entitled to attend, for the purpose of giving advice, all proceedings of the Board of Governors relating to any determination mentioned in sub-paragraph (1)”.

887. That subparagraph provides for the dismissal of a member of staff. At the end of the day, does the final say on the dismissal of staff rest with the board of governors? We will have to work our way through this when we come to the clause-by-clause scrutiny. Paragraph 6(8) of schedule 2 says:

“The scheme shall provide that ESA shall not dismiss a person employed by it to work solely at the school except”.

888. It then lists subparagraphs (1) to (7), article 35 of the 1998 order and any regulations made under article 70. You become suspicious when you see the subset of regulations in there that it is

just as simple as the power still rests with the board of governors.

889. **Mr Stewart:** Actually, Chair, when you decode all that, it is as simple as the power rests with the board of governors. There are, if you like, two backstop provisions for ESA, and they will only come into play if, for some reason, the board of governors decides not to dismiss. That would be if someone was statutorily debarred from a teaching post; say they lost their registration with the General Teaching Council or were convicted of some very serious offence that meant that they were no longer legally entitled to be a teacher. If, in those circumstances — I really cannot imagine this happening — a board of governors declines to dismiss that individual and there is a real threat to the safety and well-being of children, ESA, as the employer, could dismiss. Other than those circumstances, as I hope the schedule will make clear — we could perhaps explain it a bit more thoroughly — the power to dismiss rests with the board of governors along with the power to appoint.

890. **The Chairperson:** I think that the Committee Clerk gave you a list of other concerns and issues that were raised. Do you want to work your way through clause 13 or do you want to do it numerically and go to clause 4?

891. **Mr Stewart:** We could start with clause 4, Chair. That clause seems to have aroused a degree of suspicion. Why would the Department have a power to modify schedule 2 and in what circumstances might we use that? Is it really the Trojan Horse by which we will get in later and take away or undo all the commitments that we have given to boards of governors? No. It was the first question that Trevor asked me in Omagh. Why is it there? It is because policy evolves over time, and sometimes there is a need to change what is in legislation. Taking a power to do so by order simply makes that slightly easier to do. If it were not for that, the Minister of the day would have to go back to the Assembly with primary legislation to amend the Act that will be passed

- on foot of this Bill. However, because of the significance of those powers, and the long-standing concern about employment arrangements in the Bill, that power is subject to the affirmative resolution procedure. That is an awful piece of jargon: what does it mean? It means that the Department cannot exercise that power without the approval of the Assembly. So, we cannot change schedule 2 without the approval of the Assembly.
892. **The Chairperson:** Any questions? Trevor?
893. **Mr Lunn:** That stopped the show, all right. *[Laughter.]* No, I am fine.
894. **Mr Stewart:** I very much doubt it, Trevor.
895. **The Chairperson:** Clause 13, then.
896. **Mr Stewart:** Yes, Chair, if I can demystify clause 13; it does seem to raise a number of concerns. Perhaps the first thing to say is that that particular power is not new. The Department has the power today to modify employment law. We have not done so for some time. I think 1991 was the last occasion.
897. If you read the clause carefully, you can see that it is tightly circumscribed in the purposes for which that power can be used. We will not have the power to simply come along and change employment law if we feel like it or to change any of the fundamentals of employment law. That would be for our colleagues in the Department for Employment and Learning (DEL). The only purpose for which we can modify employment law is to make the employment arrangements in this Bill work. There is a particular reason why we would need to do that, and this allows me to clarify another point raised by a number of stakeholders: who is the employer? Is it the board of governors or ESA? If you read the heading of clause 3, you will see that the Bill is very clear on this. ESA is the employer in law, full stop. There is no qualification on that. However, it is a delegated model in which boards of governors will exercise the full range of employment functions on behalf of and in the name of ESA as the employer. We do recognise that particular colleagues in the voluntary grammar sector have concerns about that, but that is how it is intended to work.
898. In order for that sort of arrangement to work, it is necessary to modify employment law to make sure that education law and employment law do not get out of kilter. Where that really kicks in is around dismissal. Employment law requires the employer to take certain steps before an employee is dismissed. If those steps are not taken by the employer, a tribunal would automatically deem such a dismissal unfair, if it were referred to a tribunal. As things stand, if we were to make no change to employment law, the board of governors might take those very necessary steps and do all the right things. However, the board of governors in law is not the employer, and a tribunal would, therefore, find on a technicality that the dismissal was unfair. So, the modifications that we will make to employment law will, in effect, be to say that those certain steps that have to be taken still have to be taken but will be taken in this instance by the board of governors and not by ESA. In doing so, we will make sure that boards of governors are able to exercise that autonomy around decisions to dismiss and are not dependent on ESA taking certain steps on their behalf.
899. **Mr Lunn:** Does that mean that the normal procedure under employment law for dismissal of somebody for minor or major misconduct is not being bypassed?
900. **Mr Stewart:** That is not being changed. Nothing in the Bill gives the Department the power to alter the fundamental responsibilities of an employer or, perhaps more importantly, the fundamental rights of an employee in terms of their protection. It would be more accurate to say that we are not so much modifying employment law as modifying how it operates or the assignment of some of the roles under employment law. The fundamental principles are not changing.

901. As I said, we have that power today, and there is a reason for that. The employment arrangements were, I think, referred to earlier as “CCMS-lite”. I do not know whether I would use that particular phrase, but, if you wanted a comparator within existing legislation, the closest model is the one that operates in the Catholic maintained sector through the Council for Catholic Maintained Schools. So, in order to allow boards of governors of Catholic maintained schools to take decisions on dismissal, it was necessary to modify employment law, and we did that in 1991.
902. **The Chairperson:** We will move on to clause 16 and the by-laws. I am just wondering what powers the chief executive of ESA wanted to have.
903. **Mr Stewart:** This is not a major plank of the legislation. If they were still here, I would want to reassure colleagues from this morning that we are not proposing to give school principals powers of arrest or detention. *[Laughter.]*
904. **The Chairperson:** Unless it was for use on officials from the Department. *[Laughter.]*
905. **Mr Stewart:** I think that they might be shot on sight rather than arrested.
906. There are no proposals there; that is simply a carry-over. In putting the Bill together, one of the things that we did was to transport across all the existing functions of the existing organisations. There is a power in the 1986 order for education and library boards to make by-laws. There is not really a focus on schools in that power. In the 1986 order, it would have been thought necessary in order to regulate conduct around libraries and perhaps even more so around youth services. You will see that that power is tucked in underneath a clause heading about educational and youth services.
907. As I said, that was simply a carry-over of an existing power. From speaking to colleagues in education and library boards, I do not think that anyone can recall the last occasion on which that power was used. The Committee might want to consider whether it is needed. As I said, I do not think that it is a major plank of the legislation. It is certainly not the phantom that colleagues might have seen this morning, and it is not going to have any effect on schools whatsoever.
908. **The Chairperson:** OK. Issues about the ethos of governors were raised in relation to clause 39.
909. **Mr Stewart:** Yes. You have heard a contrasting range of views on ethos today. You heard from trade union colleagues, who see it as an unnecessary encumbrance and something that should be standardised throughout education, and from other colleagues, who said that it is exactly the opposite. Ethos is a difficult quality to define but, nevertheless, it is a very valuable and necessary quality. It has real value and adds real value in schools and sectors. The Minister’s policy position is actually much closer to the latter view.
910. This is an evidence-based provision, and that was touched on earlier this morning. We know what good schools look like, and there is very clear evidence about what works. Many would say, rightly, that it is about the leadership that is given by boards of governors and the senior management team, the standard of teaching and learning in the classroom, and having an ethos that is supported by the school community: the board of governors, the staff, the parents, the pupils and the community that the school serves. The objective evidence is there. Where there is a strong ethos in a school, whatever it may be, and it enjoys the support of the school community, those schemes tend to be successful.
911. Where we would agree, in part, with trade union colleagues is around the fact that if you look at the ethos of many different types of successful schools, you can see that they have a lot in common. There are many common elements in the ethos of successful schools. Ethos is important, and that is why the Minister thought it worthwhile, again recognising the important leadership role of boards of governors, to look for

boards of governors who are committed to the ethos of the particular school they want to serve. We have been asked a number of times whether that is a qualification and how we will measure or judge that. Quite simply, we will ask applicants what sort of schools they are interested in serving or leading, and we will ask them to confirm that they are committed to and support the ethos of those schools. Is it the case that the mighty, overbearing Department or ESA will continually be looking over its shoulder for evidence that governors do not support the ethos of a school and use that to somehow remove them from the school? No, absolutely not. That is simply nowhere in the Minister's policy intention.

912. **The Chairperson:** Why was it necessary to have subparagraph (7)(b)? Would subparagraph (7)(a) not have been adequate? It states:

"to choose for appointment persons appearing to ESA to be committed to the ethos of the school".

913. To clarify, I am not asking this because subparagraph (7)(b) deals with the Irish-medium sector. I would have asked that question if it had been any other sector. It seems like one sector is being given something different. Either you would not include that subparagraph or you would amend it to say "every school". Subparagraph (7)(b) gives an added layer, particularly when it refers to:

"the continuing viability of the Irish speaking part of the school."

914. That read-over is not given to any other sector in relation to those appointments.
915. **Mr Stewart:** The starting point for drafting the Bill was to take the provisions in the previous Bills that were considered during the last Assembly mandate and include in the new Bill those provisions that the then Minister indicated she was minded to take forward, including some amendments that were tabled at the time.

916. If I recall correctly, that clause was proposed by the then Deputy Chair of

the Committee, Dominic Bradley, and the Minister at the time was supportive of it. Hence, it has been drafted in the current Bill. I suppose that the short answer is that, as with any provision, these are matters of policy and politics. It will be for the Minister and Committee members to decide whether their inclusion in the Bill is correct or incorrect.

917. **Mr Lunn:** Why does the clause not also refer to integrated schools? I know that encouragement and facilitation are not mentioned because they are in the previous order. However, as far as I know, the requirement to choose people who are committed to the ethos of a school is not in the previous order.
918. **Mr Stewart:** Could I go back to the reference to clause 2(5)? That provision is analogous to an existing provision in the Education Reform (Northern Ireland) Order 1989 relating to integrated schools. That does not refer to the viability of integrated schools, but, essentially, to their integrated nature. There is a duty on the boards of governors of those schools to keep them integrated.
919. **Mr Lunn:** Yes, but their integrated nature is a major component of their viability.
920. **Mr Stewart:** Yes; it is.
921. **Mr Lunn:** If they were to move outside the rules laid down for them as integrated schools, they would no longer be viable as integrated schools.
922. **Mr Stewart:** That is right. I think that, in framing the amendment, the Deputy Chair was looking for an analogue to the integrated nature of schools, and the way he chose to frame the proposal was to use the word "viability". This provision is directly analogous to an existing provision that refers to integrated schools, and, therefore, there was no need to repeat that.
923. We cannot point to an absolute analogous provision to that which is contained in clause 2(5). However, it nevertheless stems from the two statutory duties the Department is subject to, which are to encourage and

- facilitate Irish-medium and integrated education. It was on foot of one of those statutory duties that that was proposed by a Committee member, who thought it was appropriate to place a similar duty on ESA. However, it would not be correct to say that a similar duty is proposed for ESA to encourage and facilitate integrated education. That is not currently there.
924. **Mr Lunn:** I was getting a Sir Humphrey moment there. I still think —
925. **Mr Stewart:** I am not sure whether that is a compliment, Trevor.
926. **Mr Lunn:** You can work it out afterwards.
927. Controlled and maintained schools do not have viability problems, except with certain criteria that have nothing to do with ethos, but enrolment. Irish-medium schools and, particularly, integrated schools do have a problem with the control of their viability in the balance of their pupils.
928. Let me put it this way: I can feel an amendment coming on. There should also be a reference in that clause to integrated schools.
929. **Mr Stewart:** That is very easy for me to answer. It would be a policy question for the Minister to address.
930. **Mr Lunn:** Chair, you skipped over the issues with clause 38 regarding attainment and achievement.
931. **The Chairperson:** Yes; OK.
932. **Mr Stewart:** I must confess that, until I heard it this morning, I was not aware of the debate over the relative merits of “attainment” versus “achievement”. However, as someone else pointed out, I note that both words feature in the clause. What I would also say is that if teachers are pedantic, I can tell you that the legislative counsel goes several orders of magnitude further and that he would not place any word in the Bill without very careful thought. I am happy to engage with him again to put the point to him that was raised by colleagues this morning. However, I can assure you, Chair, that legislative counsel will have given very careful thought to the right way to construct that clause.
933. **The Chairperson:** Or the Minister could give that assurance at a later stage of the Bill. We will want to satisfy ourselves on whether there is a distinction or difference and whether it is something that we need to clarify in our minds so as to take out any degree of uncertainty or concern.
934. **Mr Stewart:** It could certainly be looked at. If we have inadvertently given rise to the wrong effect, we can look at that. Perhaps we could offer some reassurance by posing the rhetorical question: who makes the judgement as to whether the criterion, the duty in the clause, has been met? First and foremost, it would be up to the board of governors. Of course, it does not stop there; there is also the process of inspection, and ESA and the Department’s consideration of how a school is performing. However, first and foremost, the board of governors will consider whether the duty has been met. In doing so, the board of governors will take into account all the contextual factors mentioned this morning.
935. **The Chairperson:** Would not having it clarified in a meaningful way have a knock-on implication for area planning because of ESA’s power to decide on that based on the criterion of whether a school had met that benchmark?
936. **Mr Stewart:** I would not envisage the clause being used in that particular way. I do not think that it is a pass or fail test for a board of governors that will feature in area planning in that way. Look at the genesis of the clause. I forget who said it in a previous session, but I was struck by an answer to the question of whether placing this duty on a board of governors was a good or bad thing. I think that Aidan Dolan actually asked, in reply: what else would a board of governors do if it were not interested in raising standards?
937. We do not see this as some sort of new imposition or new pass or fail test that we will apply to boards of governors. It

- is recognition of what the vast majority of very good boards of governors already do. They see it as their business to ensure that their schools are successful. This is finally, if you like, recognising in legislation what boards of governors already do.
938. **The Chairperson:** Clause 45, or is it clause 44, extends the powers of the Education and Training Inspectorate?
939. **Mr Stewart:** It is in that region of the Bill.
940. **The Chairperson:** Obviously, there is a concern about why it is necessary to extend these powers. From what you heard this morning, Chris, have you any comment on that?
941. **Mr Stewart:** I will offer a couple of points on this. First, and unfortunately, I am afraid that I do not have the detail of the comparative legislative provisions in Scotland, but we can obtain them and come back to the Committee at a later stage.
942. Why are these powers necessary? The answer is that it was on the advice on successive Chief Inspectors who felt that the inspection regime in Northern Ireland was lagging some way behind those in other jurisdictions in the British Isles. I am conscious that a number of the points raised this morning were about the professional practice of inspection, on which I defer to my colleague Noelle Buick, who has been to the Committee already and would be more than happy to return and talk about those aspects.
943. However, I will offer a number of observations in response to some of the points made this morning and more generally around the debate on inspection. First, it is worth bearing in mind that, at the risk of stating the obvious, all inspectors are highly experienced professionals. They are all teachers. They have all been senior teachers. I have interviewed and appointed inspectors. They occupy senior positions in the Department for which experienced vice-principals and principals tend to come forward.
944. Secondly, in addition to their teaching and school-leadership experience, they have considerable experience in inspection, and inspection is not intended to be a punitive process; it is one to inform improvement that is led by schools. It is a self-improvement, self-development process. So, inspectors have gathered experience, which a couple of people this morning referred to in describing the role of the district inspector. Inspectors visit a number of schools. They are able to see, at first hand, best practice as it is developing in schools, and they assist in the spread of that best practice by subsequently going into other schools. That is an important point about the value of inspection that should not be overlooked.
945. Most importantly of all, perhaps, are the outcomes of inspection. A number of schools have entered and then exited the formal improvement process in recent years. It was not the inspectorate or the Department that brought about the improvement in those schools; it was the school leaders in those schools who did so. However, they did so on foot of a process that was triggered by inspection. It is not punitive; it has helped those schools to get where they wanted to be, which was to become successful schools. In doing so, it has secured the educational experience and future of a number of cohorts of children who would otherwise have been in unsuccessful schools. Sometimes, in the broader debate on all of this, we lose sight of the core purpose of inspection, which is to assist school leaders in the job they have to do. Whether we do it right or do it wrong, or whether we could do it better is, of course, a whole different debate.
946. **The Chairperson:** Will you clarify one point? The heads of agreement 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.”*

947. Does that piece of work relate to the inspectorate and CCEA, because a number of clauses look after both and make recommendations? If the heads of agreement says that further consideration should be given, would we not be advised to take those two elements — CCEA and the inspectorate — keep everything as it is and take all of that and do it in a separate piece of work at some stage? I have always had the view that we could have had ESA seven years ago by a simple amendment to the 1986 order without all of this. However, others had different views; hence, we have a Bill with 67 clauses and seven schedules.
948. **Mr Stewart:** Sixty-nine, Chair, unless you have removed a couple when I was not looking. *[Laughter.]*
949. **The Chairperson:** It probably will be 67 when we have finished.
950. I will probably anticipate your answer, which is that that was a policy decision. However, we have an issue in the heads of agreement document. My view is this: why not take those elements out, set them to the side and let whatever decisions are to be made about CCEA and the inspectorate be allowed to continue until a resolution is found?
951. **Mr Stewart:** You are absolutely right, Chair. You have answered your own question. It is a policy decision.
952. You have correctly described what was said in the heads of agreement. The Minister's view, which the Executive accepted, was that the priority for now should be the establishment of ESA and that, therefore, we should do the minimum around inspection and CCEA. He has not ruled out future change, and that may be something that he wishes to return to in the future. However, for now, it is very much to do the minimum.
953. On foot of that, it is our view that the changes to inspection are relatively modest. As we said at previous meetings, there is no change for DEL, and there is a scaling back of the inspection provision in relation to the Department of Culture, Arts and Leisure. With regard to the schools and the Department of Education, there is a modest and limited proposed extension of the powers. With regard to CCEA, it really is care and maintenance in the provisions, and there are no significant policy changes there.
954. However, a good tidying up of the CCEA provisions is long overdue. We did not do so on previous occasions because it was thought that CCEA would become part of ESA. When the decision was taken that it would not be, it was thought that the time was right to do a little bit of that tidying up. The tidying up is so extensive that legislative counsel's professional advice was that we would be better starting off with fresh provisions, and that is why there is a block of provisions in the Bill relating to CCEA. However, it does not bring any significant policy change.
955. **The Chairperson:** In relation to CCEA, a written submission from a union representation for today's meeting regarding clause 51 stated:
"Education reform Order (1989) limited cooperation to within UK. Is there any hidden agenda behind this extension?"
956. That is coming from a union.
957. **Mr Stewart:** There is no hidden agenda, Chair, just recognition of the limits on the Assembly's legislative competence. We cannot legislate to give effect outside Northern Ireland.
958. **Mr Lunn:** The Ulster Teachers' Union's specific objective was:
"There should be no need for them [inspectors] to have the power to 'inspect, copy and take away documents' or obtain access to computers".
959. Is this an extension of the powers they already have?
960. **Mr Stewart:** Yes, it is. There is no explicit power in the legislation today to do those things, although, as your questioning earlier elicited, I have no doubt that inspectors do take copies and seek access to documents during inspection at present, but they do not have the formal power to do so today.

- This provision would give them one. It mirrors a very similar provision in the Ofsted legislation.
961. **Mr Lunn:** The unions seem to be saying that, in some circumstances, they have been forced towards industrial action to stop inspectors doing certain things. If the Bill goes through, will it remove the possibility of them being able to do that?
962. **Mr Stewart:** No, it would not. If the powers were there and if union members, in pursuit of industrial action, decided not to co-operate with them, that would be, as it is today, a matter for their employers or the boards of governors, acting in an employment capacity, to decide whether to take any action. I was interested by the reference to industrial action this morning. Trade union colleagues can correct me if I do not describe their position correctly now, but I do not think that the industrial action was against the inspectorate. It was against inspection because that was one of the areas where they could take action. It was industrial action against the employers.
963. **Mr Lunn:** Yes, necessarily so, but it was probably provoked by the inspectorate.
964. **Mr Stewart:** I will leave trade union colleagues to answer that one.
965. **Mr Lunn:** Assuming the Bill goes through unaltered in that respect, if a teacher or school refuses to allow the copying, inspection or taking away of documents, they will actually be in breach of the law whereas previously they would not.
966. **Mr Stewart:** I do not think that is the correct way to describe it. The position would be much clearer if we were in England and it were an Ofsted inspection, because, in England, it is a criminal offence to obstruct an inspection and legal action could be taken by the inspectorate. That will not be the case here. The provisions in the Bill will give the inspectorate the right of access to those documents, but if someone decides not to comply with that, in pursuit of industrial action, that does not mean that the individual will be guilty of any sort of criminal offence or lawbreaking.
967. **Mr Lunn:** If it were done outside of industrial action, and they just said that the inspectorate were not getting the papers; what sort of an offence is that? It is hardly a criminal offence.
968. **Mr Stewart:** It would not be a criminal offence. It would be a disciplinary matter for the employer to consider.
969. **Mr Lunn:** If the headmaster and the board of governors agreed with them, where would ESA come in? There must be some draconian power here somewhere.
970. **Mr Stewart:** Many fear that we have included those in the Bill, but a search for them has yet to find one. It would not be the case that that sort of action would be a criminal offence, and there are no proposals in the Bill to make it so.
971. **Mr Lunn:** I am not suggesting there should be. I am just curious about where it ends if you get a stand-off between a school and the inspectorate because the latter is not getting access to look at a computer or copy the papers, and the headmaster and board of governors, for whatever reasons, agree with that decision. What would the inspectorate do?
972. **Mr Stewart:** It is difficult for me to answer that. It is a situation that we hope will never arise because we hope that enlightened leadership in schools would recognise, as it does today, the value of inspection. It is part of the process, and only part of the process, that produces the evidence and the data that school leaders need to take forward the process of self development and improvement of schools.
973. **Mr Lunn:** I hope that good sense will prevail.
974. **Miss M McIlveen:** Where does this sit in relation to freedom of information?
975. **Mr Stewart:** Do you mean whether the inspectorate could submit a freedom of information request to the school if it was being denied the information? In

theory, yes. Again, one would hesitate to go down that route. I do not think that that would be indicative of the right sort of relationship between the inspectorate and schools.

976. **The Chairperson:** OK, I think that covers all the issues. Thank you, Chris. I appreciate your time and help in this regard. We may write to you in relation to the Jordanstown agreement.
977. **Mr Stewart:** A colleague was fortuitously able to confirm my earlier view that there is nothing in the Bill that would change the Jordanstown agreement. If it were to change in the future, it would be through negotiation between the trade union and management sides.
978. **The Chairperson:** Thank you. Members, that concludes our first session in relation to the scrutiny of the Bill. Obviously there is still a long way to go, but thank you for your indulgence.

5 December 2012

Members present for all or part of the proceedings:

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

Witnesses:

Rev Ian Ellis	<i>Transferor</i>
Rev Trevor Gribben	<i>Representatives'</i>
Miss Rosemary Rainey	<i>Council</i>

979. **The Chairperson:** I welcome Reverend Trevor Gribben; Reverend Ian Ellis, secretary to the Transferor Representatives' Council (TRC); and Miss Rosemary Rainey, vice-chair of TRC. You are very welcome. Thank you for coming here. I am very tempted to ask for your advice on the moderation of levels of progression, but I will not do so. That subject is the reason for the delay; my apologies for that. The Committee had other business this morning. Thank you for coming and for your submission. We look forward to engaging with you.
980. **Rev Trevor Gribben (Transferor Representatives' Council):** My particular Church understands moderators. *[Laughter.]* My Methodist and Church of Ireland colleagues, however, may be a bit confused.
981. Thank you for your invitation today. There is a bit of déjà vu. When we met Chris Stewart in the entrance hall, I thought that I had gone back two years, like in the 'Back to the Future' films. It is good to be here with a different Education and Skills Authority (ESA) Bill. As transferors, we are delighted to be able to welcome the progress made in bringing the Bill to this stage. This has the same

title — it is an ESA Bill — but from our perspective, it is a very different animal.

982. We greatly welcome the political process that has got us to this point, as well as the engagement and various agreements that have been made. We particularly welcome the proposed sectoral body for controlled schools. Some have said that that is a major gain for the controlled sector. We see it as righting an injustice that has gone on for decades in Northern Ireland. We do, however, recognise it as a gain; it is very positive. Even now, there is a feel-good factor throughout the controlled sector in all kinds of schools because, for once, they will have a cohesive voice. Even the promise of that has done a lot.
983. As transferors, we welcome and, indeed, are heartened by the fact that our existing legal rights are acknowledged and protected in the ESA Bill, which was very much not the case in the former draft legislation. That will enable transferors to continue to play a constructive role in partnership with others in education, which has always been the position of the transferring Churches since we transferred our schools to state control.
984. Transferors acknowledge the work done to get us to this point. We see that as continuing the legal rights and legislative guarantees that were given by the Government of Northern Ireland to Churches that handed over their schools to the state for safekeeping. We also acknowledge the membership proportions on the ESA board: 40% elected; 20% transferors; 20% trustees; and 20% other nominees. We welcome those proportions as they reflect the legal position in the education and library boards and in the old education authorities before that. We are not there simply because we are an interest group, but because it is a continuation

- of legal guarantees and rights, and we wish to acknowledge that today.
985. As we state in the introduction of our submission, we recognise that the Bill has to be scrutinised by the Committee. We welcome the fact that that will be more detailed than originally envisaged, with the extended period. Nonetheless, we will welcome the day when the ESA Bill is passed by the House and becomes law as an Act, because we believe that change is necessary. In its day, the current system of education and library boards and the Council for Catholic Maintained Schools (CCMS) served well, but it is now beyond being able to continue to perform its functions through those bodies.
986. I will now highlight some particular points as I work through our submission. We welcome the holistic approach to education in clause 2. We also welcome the responsibility to contribute to the moral and spiritual development of children. As transferors, some of the legal guarantees we received when we transferred schools were not only about the presence of transferors on certain bodies but about the protection of religious education. We hope that the TRC and, indeed, the controlled sectoral body will have a part to play in ensuring that religious education is protected. It is Christian in ethos, but it has to be open to other faiths and have modules in other faiths. Nonetheless, legislatively, based on the 1986 Order, which is still the law of the land, it is Christian in ethos.
987. We note the various references to sectoral bodies or those deemed to represent them, which is an interesting phrase, being consulted. We advocate a further strengthening in legislation of the position of sectoral bodies. For instance, the phrase:
- “consult with and have due regard to the views of”*
988. is stronger than simply “consult”. If we reach the day when everyone is consulted about everything in legislation, and if there is a particular consultation because of existing and future legal rights, perhaps that phrase could be strengthened. We, along with others, suggest that a phrase such as “sectoral body for controlled schools” be inserted, rather than the very euphemistic phrase, “persons or bodies deemed to represent controlled schools”. It might mean that Chris and his friends will use less ink when they do the final draft of the Bill. I am sure that he will have a good response to that later.
989. The TRC welcomes the fact that the teaching appointment committees are going. We played a part in those in the area boards, and they had their place in the day. However, we recognise that that disadvantaged controlled schools, in the sense that they were not able to appoint their own principal or, in some cases, vice-principal. We welcome that, and we are happy to give it up, because we think that that is the right thing to do. However, as stated in our submission, when ESA is appointing assessors to sit alongside schools in filling senior management positions, we think that those should be more than HR specialists and that a panel of assessors should be drawn up, in conjunction with the sectoral body, to help to protect ethos and other such dimensions of the controlled sector when appointments are made.
990. For us, one of the key things that needs to be changed in the controlled sector is leadership. We need to invest in and develop leadership. Those senior appointments should not be made by a body other than a board of governors. We are fully supportive of that, but assessors should sit alongside the board not only to give it legal advice but to help it — particularly in, say, a small rural primary school — to make judgements between people on the grounds of leadership. We feel that that would be worthwhile.
991. In our submission, we refer to clause 28 and the fact that we want to see more in the Bill about shared education. I am sure that our colleagues from the integrated sector, who follow us today, will say much about that. We want it said very clearly “shared education”.

- Integrated education, whether we like it or not, has become a sector, and it is a valuable one. We welcome that it has a Christian ethos in Northern Ireland. Many people go to integrated schools, which are still in the minority, and parents have the right to make that choice. However, it is a sector, whereas shared education is a concept that all people can embrace. As suggested in our submission, we want, for instance, a duty on sectoral bodies to work together to maximise co-operation and, where possible, develop shared educational provision. We feel that something needs to be written into the Bill in that regard rather than writing in “integrated education”, which refers simply to one sector. It is about maximising the potential of shared education, which is a term that all sectors can embrace.
992. For the record, we say that we see shared education as having a Christian ethos, because the vast majority of our schools have a Christian ethos, and the vast majority of our pupils are in the controlled or the Catholic sector. If sharing is going to work, young people from those sectors will have to come together around the curriculum in other ways in order to share in education. That is what we would like to see encouraged more in the Bill. I am sure that members will have picked up on a subtle point in our submission. Let me articulate it more fully for your sake, Chairman. It is to do with planning for the controlled estate. After long discussion, we recognised that the point at which we have arrived today is perhaps the best accommodation that could be reached, which is that ESA will continue to own the controlled estate. All the permutations have been considered and discussed, and we have reached what seems to be the best practical solution. However, that potentially still puts the controlled sector at a slight disadvantage. If other sectoral bodies have a direct link to ownership — say in the integrated or Catholic sector — and they are participating in area planning with the weight of ownership behind them, ESA must remain neutral between
- sectors. ESA must be an honest broker in area planning.
993. We are suggesting that, if a way can be found legislatively or in ESA's standing orders to enable the controlled sectoral body to participate in estate management discussions and negotiations on behalf of the controlled sector, that allows a body that is an advocate for the controlled sector to have a voice and would parallel that to other sectors in education. If necessary, I am sure that others who understand the issue better than me could further such a pact.
994. Our submission makes a point about advisory and support services for schools, and we want to put down one cautionary note. Although in principle we would support maximising the autonomy of local schools through boards of governors, we want to note the danger of that in Northern Ireland. If groups of schools choose to come together to buy in support services, and if that is done on a sectoral basis, we could end up in Northern Ireland with a Catholic CASS system and a CASS system for other schools. An advisory and support curriculum should be delivered, ideally through ESA, to every school.
995. It would be unfortunate if we had a further Balkanisation of advisory and support delivery through legislation that permitted groups of schools to come together to buy in services. We do not feel that that is the intention of that clause, but we want the Committee to explore that with officials and others to ensure that that could not happen because it would not be good for us as we move forward.
996. Our submission also refers to religious education (RE). That has been a factor in controlled schools up and down Northern Ireland whose boards of governors have wanted RE to be inspected professionally by the inspectorate, as every other subject is. However, because those schools do not technically make the request within the exact 30 seconds that they have to make it when an inspection is

- notified, it does not happen. A controlled school should be able to say that it wants inspectors to inspect RE. The Department of Education (DE) should have the ability to log that information, and when inspectors arrive two years later, they inspect RE. That is what our little amendment suggests.
997. My colleague the Rev Ian Ellis will speak to our final point regarding a peculiarity in the controlled sector for transferor appointments to controlled, non-selective secondary schools. Ian has a better mind than I have, so he understands the issue and can articulate it much better than me.
998. **Rev Ian Ellis (Transferor Representatives' Council):** That is not the reason. The reason is that, more often than not, I take the phone calls about the issue. Thank you, Chairman, for a chance to articulate this point. It is referred to towards the end of our submission, and it gives us an opportunity to address something that has been an issue in the controlled sector for a long time, particularly affecting transferors.
999. You may wonder what on earth that has to do with schools, schools improvement or making things better. It is linked very directly, and I will come to that. The nub of the problem is that a controlled secondary school has a board of governors with transferors on it. However, those transferors have to be elected from the contributory primary schools. No one else can be elected. They have to be on the board of a primary school that feeds into that secondary school. No other governor in the secondary school needs that double job — you understand that phrase, I think. *[Laughter.]*
1000. **The Chairperson:** Some of us, yes.
1001. **Rev Ian Ellis:** Some of you do. You know what I mean.
1002. We have to be on a primary school's board of governors before we can be elected to a secondary school's board of governors. In the old days, 20 or 30 years ago, that was fine because being on a primary school's board of governors was not a great, onerous task. However, as you know, governors' responsibilities have now increased. The frequency of meetings has increased. There are fewer and fewer transferor governors on primary school boards who are willing to take on the extra job of being on a secondary school board. So when they are called together for meetings, they either do not go or only a few turn up and it is muggins's turn. It is not an effective way to put governors on a secondary school board.
1003. You and I all know that there is huge pressure on secondary schools at present. They need strong leadership. They need committed governors who can give time for meetings and the kind of governance leadership that is needed. So we suggest a change to that election process. Instead of someone being drawn from the pool of transferors in the primary schools, the transferring authorities — the Methodist Church, the Presbyterian Church or the Church of Ireland, at central level — are allowed the right to make those nominations. We would go to the local churches and ask people who have an interest in education but who are not, perhaps, currently involved in schools, have a little bit of time and, above all, have the skills, inspiration and commitment to work on a secondary school board to do that and to take that on. That would free us up to be able to widen the net a little and find more appropriate and better leadership for those schools. That is one way to try to address the issue.
1004. Given those pressures on secondary schools, that fits in with where we are going to improve schools. We need to enhance standards and raise aspirations. Above all, we need people who will keep not only children's aspirations high but staff morale high. Good, supportive governors on school boards will help to do that. We think that we could, perhaps, arrange that better if we were doing it centrally rather than relying on an election system that is not really working. If the Bill could have that attached to it, it would give

- us a mechanism by which to adjust it. We are also open to speaking to the Department to find the exact way in which we could do that. However, we have been appealing to the Department for years to do that. Perhaps this is an opportunity to do it and, at the same time, enhance what we can bring to the leadership of secondary schools throughout the controlled sector.
1005. **Rev Trevor Gribben:** Perhaps, Chairman, I could make one concluding remark. We are certainly open to questions. Rosemary will come in to bat on all your difficult questions in a moment.
1006. We see the establishment of an Education and Skills Authority as a way forward to giving equality of treatment for all schools in Northern Ireland. All schools are grant-aided. We would not want anything in legislation that gives any particular sector particular rights. ESA must treat all schools equally. Therefore, hints in other areas of assurances that bodies must discriminate in favour of particular sectors — I will not name two, but you could write that bit in yourselves — seems to jar against every school being treated equally. Someone has to grasp that as the ESA becomes established.
1007. The vested privileges and advantages that certain individual schools have had in the past simply cannot continue — we refer to a different grouping of schools here. If those privileges are so important, they should be available to every school. We would want to resist an argument that because certain schools, which have been independent in some sense, have had certain privileges in the past, they should be continued simply because they have had them in the past. The controlled sector has suffered long enough by being the Cinderella. It has educated the vast majority of children from a Protestant background. Those schools must be treated with equality. If a few people want to argue for vested interests to continue, they have to be available to every school. We want equality of treatment across all sectors. We welcome the fact that ESA is a huge step towards that. Much detailed political discussion and negotiation have got us to this point, and we commend those who have been involved.
1008. **The Chairperson:** Do you want to comment, Rosemary?
1009. **Miss Rosemary Rainey (Transferor Representatives' Council):** No, I am fine.
1010. **The Chairperson:** I will declare an interest at the start, much to Trevor's annoyance, I am sure, as someone who sits on the board of governors of a controlled school and who was educated in a controlled school. I do not want you to hold me up as an example of that system because it might count against it.
1011. **Rev Trevor Gribben:** I could not possibly comment, Chairman.
1012. **The Chairperson:** I appreciate what the controlled school system gave to me as a young person, so it is only right and proper that I declare an interest as a member of the board of governors of Ballymoney High School.
1013. Thank you for your presentation and your submission. I want to tease out a wee bit more the issue that you raised in relation to the inspectorate and of wanting an amendment that uses the wording:
- “except with the agreement or at the request of the Board of Governors of the school.”*
1014. I think that Trevor mentioned that. You are defined by the fact that, unless you do something at a particular moment, there is no inspection.
1015. **Rev Trevor Gribben:** I will give a very specific example. I have been in my job now in the Assembly Buildings as deputy clerk of the General Assembly for five years. Prior to that I spent 12-plus years as a minister in Whiteabbey Presbyterian Church and was on several boards of governors at the time.
1016. One of those boards of governors passed a resolution, at my and other transferors' urging, that we would request that RE be inspected at the next inspection. That went into our minutes, but an inspection did not come around

- for about three or four years. When it came, lo and behold, RE was not inspected. When I and others asked why, we were told that it was because we had not asked them, when we got the notice that the inspectors were coming, to inspect RE.
1017. There did not seem to be a mechanism whereby we could simply say as a board of governors that, now and for all time, we want RE to be professionally inspected because we feel that it should be taught as a professional subject. It should not be a sectarian subject; the legislation states that it is “undenominational” — whatever that interesting word means. It is taught with a Christian ethos that is based on the scriptures. We want that to be inspected. We want it resourced and inspected professionally. We want the inspectorate to help to improve it, which, I assume, is what they are about.
1018. There does not seem to be a mechanism in schools whereby it can be registered that, every time inspectors come to a school, RE should be inspected. That board of governors fell foul of that, as have many others. They thought that RE would be inspected in the controlled sector, but it has not been. When we ask, we are told that, unless we ask specifically and at a particular time, it does not happen.
1019. **The Chairperson:** Would that strengthen the procedure as it is currently constructed in the Bill?
1020. **Rev Ian Ellis:** We are open to discussing the right mechanisms with the inspectorate. There is obviously a hiccup that is preventing things happening. Our motivation in this is around the esteem of the subject. If someone is teaching a subject that is never inspected, it does not say very much about the subject.
1021. A good many RE teachers out there are doing an excellent job, but their subject is never examined, and their teaching and learning is never properly inspected. They never have a good report, nor have they ever had anything said to them that would help them to teach better. There is a feeling that the subject is not being treated equally with other subjects.
1022. I know that the Department is focusing on literacy and numeracy, child protection and pastoral care. Those are important subjects, but when a general inspection is taking place and the curriculum is being examined and teaching and learning is taking place, we think that RE ought to be looked at. A mechanism needs to be found to enable that to happen, because it is not happening at present.
1023. **The Chairperson:** I have seen correspondence making a claim that, somehow, ESA would bring to an end the Christian ethos and identity in schools and that this was the end of the world. In fact, it is ironic that the person who raised it with me was associated with an independent Christian school, for which the Bill makes no provisions because there will still be independent schools. I also declare an interest as a member of the board of governors of an independent Christian school.
1024. I want to put on record our appreciation of the work that transferors have done over the years in the sector, and I concur with Trevor’s comments that, in the past, the controlled sector has been treated, in many respects, as a Cinderella in our education system. From the transferors’ point of view, as the Bill currently stands, do you see any other threat that would undermine, diminish or weaken the Christian ethos and identity of schools, particularly, for your purposes, in regard to the controlled sector?
1025. **Rev Trevor Gribben:** Chairman, we do not. That is probably as direct an answer as you will get in a political forum.
1026. **The Chairperson:** Thank you.
1027. **Rev Trevor Gribben:** The reason for that is that we note in the Bill the rights of boards of governors to set schemes of management, employment, and so on.
1028. I have not highlighted this point, but our submission states that sectoral bodies should have a role with ESA in drafting the typical schemes of management

- that are set down for schools to adopt. We would strongly advocate that sectoral bodies should have a role in that. If ESA sends down a template for a scheme of management for governors in the controlled sector to consider, the controlled sectoral body should be part of drawing up that template. The reason for that is the Minister's commitment in writing, in the House and in Hansard that sectoral bodies will be allowed — encouraged, in fact — to develop the corporate ethos of sectors. We greatly welcome the Minister's assurances on that and the political negotiations that have gone on around it. We feel that that is a good thing. The controlled sectoral body will have a responsibility to help to develop ethos in the controlled sector.
1029. We recognise that the controlled sector is diverse and that that will have to be reflected in the ethos of the sector. We welcome that. Previously, nobody has developed ethos in the controlled sector, and all credit to the Department of Education and the Minister for coming forward with those positive proposals.
1030. **The Chairperson:** Perhaps I should have said at the outset that the Committee will consider the controlled schools sectoral support body next week. We do not want to stray into that today, and we want to work on your submission. Members should stay specific to the issue of the Bill.
1031. I want to ask a final question on clause 3. That is causing some concern by *[Inaudible.]* the voluntary grammar schools. Their issue is that, because ESA would become the single employing authority, they would lose their position and place and that the voluntary principle — however that is defined — would be diminished and lost. As representatives of schools that have been under the control of a board, which is similar in kind to what is being proposed in the Bill, do you believe that, other than the removal of the teaching appointments committee, there are other issues that need to be addressed to give schools greater confidence that their boards of governors will, ultimately, still be able to make decisions about who they employ, sack and all the issues that are invested in the Bill and that are currently the responsibility of boards of governors?
1032. **Rev Trevor Gribben:** Chair, I will begin with that, but Rosemary may also want to come in. She works very much in the education and library boards and currently chairs the Belfast Education and Library Board. As you quite rightly said, controlled schools have always had their staff employed by a body other than their boards of governors — the education and library boards. That has not proved to be a threat to controlled schools. The ESA Bill maximises the local autonomy of boards of governors. My understanding is that, in layman's terms, although ESA will be the employer, control of employment will be with boards of governors, as will the right to take decisions to hire, fire and set the kind of jobs they want, within the schemes and the law, of course. The fact that schools in the controlled sector have the right to appoint their own principals is a gain for the controlled sector, and the fact that ESA will employ that person from the controlled sector's perspective is not a threat at all. To be honest, we cannot really understand how it is a threat to any school. We are agnostic, Chairman — you can write that down — as Churches —
1033. **The Chairperson:** I am glad that you have admitted that in a public forum.
1034. **Rev Trevor Gribben:** — in this war about employment. As people of the Word, we would love the voluntary principle to be written down in words so that we might understand it. It seems to be different things depending on who articulates it. However, that may be a political point, which is unfortunate.
1035. **Miss Rainey:** Currently, the controlled schools have tremendous support and advice from HR personnel at the boards. Under ESA, it will be essential for all boards of governors to have support from HR. Initially, for those who have not been accustomed to that, it may necessitate an HR person being present for interviews. It is also essential that

there is a panel of assessors who would be able to give expert opinion as to procedures and advice at that level. Those two issues will be absolutely essential for schools.

1036. **Mr Kinahan:** Thank you very much for your presentation. I welcome a great deal of what you said. You mentioned equality all the way through and a wish to move towards shared education. I know that it is not the subject of today's meeting, but with area planning, we seem to be dividing all our schools into two sectors and rather forgetting the third, which is the integrated sector. I put that down as a marker.
1037. As to the make-up of the ESA board, we are leaving out two or three different areas, and we seem to have a board that is mainly Church or mainly political. We seem to have forgotten principals and teachers, unless you happen to put some on from your sector. How do you think that we could make the ESA board more representative of everybody? If we carry your suggestion through on governors, I appreciate that you have to have the Christian ethic working all the way through. However, we are almost moving to a monopoly. If you were to get your proposal through, will you look at putting people on a board of governors who are not necessarily Church but would certainly look to the ethos of the school so that we get a composition that is more rounded of society?
1038. **Rev Trevor Gribben:** I will respond initially to those two points and will take the second point first. Our understanding is that the constitution of the boards of governors is not being affected at all by the ESA Bill. I think that that is correct, and the Department certainly told us that it was correct. It is in legislation under the 1986 Order, and that is not changing. That was a battle for another day. However, wisdom prevailed. In a controlled school, legislation gives transferors four seats on a board of governors; in a controlled secondary school, it is six seats. All we are suggesting is that, in secondary schools, a system should be found whereby we can send someone who

does not have to be a governor in a primary school. That is the one simple point. We do not think that the Bill is entering into the debate as to how those boards of governors should be constituted. We think that that has been agreed.

1039. **Mr Kinahan:** That was what I meant.
1040. **Rev Trevor Gribben:** In appointment to a board of governors at primary school and secondary school level, transferors seek to put on the best people. Very few of them are actually clergy. They seek to put on people with experience in finance and education. Many of those people will be parents of children currently or formerly at the school. When transferors appoint, the primary concern is to put on someone who will do a good job as a school governor and will also come from a Christian background, because that is who we are. They are not there because they got a top mark in some catechism exam. That is not why we put transferors on boards, so I can give you reassurance on that.
1041. With regard to the make-up of the ESA board, let me restate what we tried to say in our submission. Although we welcome that make-up, the legal make-up and proportions should continue, as should the legal rights of those represented at that level of administration in education. That was, as I said: 40% elected; 20% transferors; 20% trustees; and 20% other nominees. If the ESA board has to be enlarged to enable other people to sit on it, we would assume that those proportions would continue. It could be an ESA board of 30 people, which would give more space for that other grouping — whatever it is made up of — if that is required. We would simply assume that those proportions would continue.
1042. There was nothing much on television last night, so I read other written submissions to the Committee. Some greatly inspired me; some helped me to sleep; and some simply made me laugh, saying that legal rights should be given up here, there and everywhere simply to put someone on somewhere. There

are extra seats, and if legislation wishes to increase that number, the board could go to 30. Education and library boards have always had more than 20 members. I am not saying that they should be as big as some once were, but there might be scope to increase the membership. However, the proportions of those legal rights should continue. We want to make that point strongly.

1043. **Mrs Hale:** Let me declare an interest as a member of the Presbyterian Board of Social Witness. I welcome you here this morning. As I read through your submission, I noticed that, under schedule 1 concerning ESA membership, you are concerned at the possibility that the Department:

“might in future require more than 4 nominations and potentially adversely affect the denominational balance of the final representation”

1044. on ESA. This is my first experience of the balance issue; I was not on the Committee for the previous Education Bill. Could you indulge me by expanding on that? It would be appreciated.
1045. **Rev Trevor Gribben:** Yes. At present, the Bill mentions four nominees from the transferors. The Transferor Representatives’ Council is a very good example of Churches working together. There may not be many good examples, but this is one of them. It would be very rare for any of our individual Churches to put in a submission about education. We tend to speak with one voice, as current transferors of schools. Therefore, three Churches are represented here today: the Church of Ireland, the Presbyterian Church and the Methodist Church. So in a sense, because of our internal need to hold that together, we would not want — even I would not want — four Presbyterians to be the four transferors. Even I would want the Methodist Church and the Church of Ireland in the room. That is a big thing for me to say. *[Laughter.]* So the thought of our sending in 12 names has nothing to do with who the Minister is, or a Minister picking four Church of Ireland members out of those

12 names. We have balances to keep. As transferors, we also want to keep a geographical balance, because a church and transferors in the rural west of the Bann have different issues than those in Ballymena, if I may give that example, which you might understand. In sending those four people, it is important for us to get the balances right. We have been given assurances, and I think that they were given in the House and are in Hansard, that the Minister will request four names from transferors this time around. We are a wee bit concerned about the future.

1046. As transferors, we will send people to ESA who can do the job. We will not send our four most senior Church people — not that they could not do the job, of course. I am on public record, and I need to watch my pay check. *[Laughter.]* We will not observe any sort of hierarchy in the Churches; we will send people who can do the job.
1047. Transferors on education boards — I will say this to Rosemary — have held education and library boards together, particularly during this last traumatic period. The chairs of the Western, Belfast, and North Eastern Boards are transferors, the chair of the Southern Board is a trustee, and there are appointed quangos in the South Eastern Board, much to our annoyance. However, that is another debate.
1048. **Mrs Hale:** Thank you, Trevor.
1049. **The Chairperson:** The issue of disparity when it comes to Ballymena is probably the language barrier more than anything else. *[Laughter.]* That is why I live in Ballymoney and not Ballymena.
1050. **Rev Trevor Gribben:** I was once at a meeting on cross-border sharing in education, and I thought it was between Ballymena and Ballymoney. *[Laughter.]*
1051. **Mrs Dobson:** Thank you, Trevor, for such an enthusiastic presentation. You are very easy to listen to.
1052. **Rev Trevor Gribben:** You should come to church some Sunday; that would put you to sleep.

1053. **Mrs Dobson:** I am Church of Ireland, so I will have to be with Ian. *[Laughter.]* I know that we discussed RE in detail, but I want to go back to it. I agree with you that RE should have the appropriate level of support in the curriculum. I know you have covered this. Do you feel that the Bill, specifically with regard to the way that the board of governors is appointed, would affect RE's place in the curriculum? Do you believe that there is enough commitment in the Bill to ensure pupils' continued spiritual development?
1054. **Rev Ian Ellis:** I will start off on that, and Rosemary can say something because she chairs a little group that meets with the RE advisers and transferors on a regular basis, so she has a bit more insight into that.
1055. What we observed over the past couple of years is that the RE advisory group — there used to be four or five of them across the region — has shrunk as the boards have shrunk. Their positions were not replaced as they retired or moved to other posts. So, we just see an erosion of the support for teachers in RE. I suppose we are asking what will happen to curriculum support for RE in a new regime where CASS is being completely transformed. Could something be done around that to enhance the support that RE could have in schools?
1056. One plank around that is the inspection thought. The other thought — I am straying into sectoral support a wee bit here, Chair — is that maybe a role for the sectoral support body could be around providing RE support, particularly in controlled schools, but also an advice service that could be bought into or used by other schools. There could be a place there to enhance the support that RE could have.
1057. **Mrs Dobson:** Do you think there is enough commitment in the Bill for spiritual development?
1058. **Rev Ian Ellis:** I think so. I was really heartened by the strapline across the Bill. Clause 2(2)(b) states that the duty of ESA is:
- “to ensure the provision of efficient and effective youth services that contribute towards the spiritual, moral, cultural ...”*
1059. “Spiritual” is the first one that is there, and I think that resonates with all the communities that we have in Northern Ireland in that the main social determinant is Christianity and Christian faith. Although everybody is not necessarily at church on Sunday mornings, there is still within most parents a desire to have their children taught within the nurture or in a context of the Christian faith. So, we see spiritual development as a key thing and as having a key role in schools.
1060. People could be looking at the ESA board and are perhaps concerned about a move towards a secular education system, but the board is reflecting, at the minute, the churches, the transferors are there, and I am sure that other people with a Christian background will be there. So, we can say that our education system in the future has got a commitment to the Christian faith right in at its very board. We are heartened by those things.
1061. **Rev Trevor Gribben:** I have one point that will expand slightly on what Ian said. The theory around the delivery of CASS and support has all moved towards school improvement. As transferors, we are totally in favour of school improvement, but it has moved away from support of particular subject areas. We would argue that religious education is particular and needs particular attention. Because it is particular and exclusive in legislation in the way it is stated, we believe there needs to be support for that subject. Whether that is done through ESA, or, as we suggest at the bottom of page 2, through the sectoral support body, there needs to be support. We also believe that that was one of the guarantees given to the churches when they transferred churches to state control — that there would be support for religious education, which is open, welcoming and non-denominational but nonetheless important. C S Lewis, that great thinker in education, along with many others,

said that those cornerstone values that have come from a Christian background and ethos are vital. They include things like integrity, honesty and working with people. We think that the vast majority of parents in Northern Ireland are not only comfortable with them, but want them in education. Therefore, we feel that religious education needs to be protected and enhanced. If a way can be found legislatively for making a statement on that, we would welcome it as the Bill goes through.

1062. **Miss Rainey:** Ian referred to the group that I chair, which meets the RE advisers — or, more correctly, did meet the RE advisers. Ten years ago, we had five RE advisers, one in each of the respective education and library boards. Over the years, as people have been reassigned to other duties and under voluntary severance arrangements, members have gone. We are now reduced to one adviser, who happens to be in the Belfast Education and Library Board, and one advisory officer, who works part-time on RE in the Western Education and Library Board. Apart from that, there is no recognised support for RE teachers. That is of grave concern to the transferors because even the two we have no longer just deal with RE. They have been sidelined — and I use that word advisedly — into delivering community relations, equality and diversity and other support services, such as citizenship, and learning for life and work. So, there are no longer RE advisers per se. It is of concern to them and us that that has become the case. Those meetings, which took place every term, have now gone into abeyance because they do not have time to meet us and have discussion with us. I want to say to you, using the words that they would say if there were here, that they found those meetings with us to be completely invaluable because they learned a lot about what was going on at congregational level and school level that they had not heard through their work in the library boards. Each of them paid tribute to those meetings and want them to continue. So, there is a deficit,

and we would like to do something about that under the new support structure.

1063. **Mrs Dobson:** I have one final point, if I may, Chair. Can I briefly take you back to the sectoral bodies? In your submission, you refer to the clarification and strengthening of functions of sectoral bodies, which you say should be underpinned by maximised legislative certainty. I am interested to hear more about your ideas for legislative certainty and what you would like to see in the Bill.
1064. **Rev Trevor Gribben:** Well, everywhere where it says, “consult with”, it could say, “consult with and have due regard for the views of”. We are led to believe that that is a legal term which means that the ESA, the Department or whoever is doing the consulting has to have a really good reason for not taking those views into account. The Minister still decides. The Department still sets policy. The ESA will still do what it does. However, “consult with and have due regard for the views of” is stronger. I think that is a Civil Service term, which Chris will be delighted that we are throwing back to him, and no doubt can counter it in some way later today.
1065. Although we are told that the term “persons or bodies deemed to represent” is a good term, maybe it could be strengthened in some way. If there is to be a controlled sectoral body, why can it not state “consult with and have due regard for the views of the controlled sectoral body” or whatever sectoral body? That would strengthen it for us.
1066. **Mrs Dobson:** You suggest that sectoral bodies could have a role in appointing school principals. How do you see that operating?
1067. **Rev Trevor Gribben:** Again, the sectoral body should have a role, along with the ESA, in identifying who the assessors should be in the pool of assessors that we feel needs to be set up. So, a group of assessors is set up who will work with controlled schools in making those should be senior-management appointments. I have chaired and vice-

chaired, and been in controlled schools and on boards of governors of all kinds over the years. Although controlled schools have wanted the right to pick their own principal rather than send three names up to somebody else to pick, when controlled schools get that right, it will be the first time that they have had that right. There will be a feeling of vulnerability in many small controlled schools. So, assessors and who they are will be really important to ensure that the ethos of the sector is represented.

1068. An outside voice can help a board of governors find the right questions to ask about leadership, and that is very important. For us, leadership is a big thing in the controlled sector. I will give you an example. Under current arrangements, other sectors have been able to use public funds to bid for and buy in leadership development for their sector, but, because the education boards have had to be neutral, they could not buy that in specifically for the controlled sector. We are hoping that, through the controlled sectoral body and other ways, the whole enhancement of leadership in controlled schools will be built up. That panel of assessors will be key in that.

1069. **Mr Craig:** I had better declare an interest as well. I am on the board of governors of three schools. I have dealt directly with Trevor and you in the past over issues about transferors, and I commend you for your suggestion at the bottom of page 6. This has caused me personal difficulty in a post-primary school where, no matter what you do, you have to remember that governors are volunteers and, ultimately, a lot of them are still in full-time employment. Our system works for those who are retired, because they have more time to give, and that is fair enough, but that pool, unfortunately, gets exhausted. As Trevor knows, because he intervened with me on the issue, it takes a long time to circumnavigate our system. Unfortunately, it led to a situation where we were without transferor representatives in the school for three

to six months. I welcome the fact that you are asking for that to be rectified, because it delays the system.

1070. I also commend you, Trevor, because I can attest to the fact that the quality of the transferor representatives that I have seen in the schools where I am on the board of governors is very high indeed. If we had met yesterday, we would have had a doctor, a Church of Ireland minister who is a very great help — I am glad that you did not fall into the trap that he did — a lecturer from the local tech, and a doctor of engineering, who sits on DETI. I can attest to the high quality of transferor representatives. Trevor, Ian and Rosemary, when you are considering people for boards of governors, I hope that you take that on board and keep up that high quality. That, in itself, attests not only to the fact that the four main churches legally have an influence on the schools and the Christian ethos, but, more importantly, you take very seriously the educational outcome of those in the sector. I am looking for an assurance that that will continue.

1071. **Rev Trevor Gribben:** I welcome what you said and thank you for it. Yes, that is taken very seriously. Some people, probably through a lack of their own education, want to parody us as wanting to put clergymen on all over the place to have some kind of sinister control over education, but that is far from the reality. Transferor governors, like all governors, are very hard working. They are people who have huge experience. Sometimes on boards of governors, principals say that they are really key to helping the board of governors function. I am sure that exactly the same could be said if the trustees were sitting here, or the Catholic Church, so it is not a sectarian comment. Some who would want to try to remove any Christian ethos from education would want to parody us as clergymen who sit and have nothing to contribute. Some clergymen are very good and those good ones are on, hopefully. Others probably use their time doing other things.

1072. **The Chairperson:** Thank you very much for your time and submission. I have no doubt that the Committee will give serious consideration to your comments, as we do with all submissions. Thank you for your attendance, and I look forward to working with the sectoral support body when it comes next week.

5 December 2012

Members present for all or part of the proceedings:

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

Witnesses:

Mr Nigel Arnold	<i>Glengormley Integrated Primary School</i>
Ms Marie Cowan	<i>Integrated Education Fund</i>
Ms Noreen Campbell	<i>Northern Ireland Council for Integrated Education</i>
Dr Ian McMorris	<i>for Integrated Education</i>

1073. **The Chairperson:** You are very welcome. Thank you for coming. I apologise that we are running a bit late, but you have had the opportunity to listen to other comments. We are in your hands. If you make your submissions, members will ask questions.

1074. **Ms Marie Cowan (Integrated Education Fund):** Thank you very much for giving us the opportunity to address the Committee. I am chair of the Integrated Education Fund (IEF), which is an independent financial trust. Along with Nigel Arnold, who is principal of Glengormley Integrated Primary School, we will address the issue of representation on the Education and Skills Authority (ESA) board. Noreen Campbell is CEO of the Northern Ireland Council for Integrated Education (NICIE) and, along with Ian McMorris, acting vice-chair of the NICIE board and chair of Lagan College, will address the duty of the Department of Education to encourage and facilitate integrated education and also area board planning.

1075. I will talk for IEF first of all. IEF has strong reservations about the proposed breakdown of membership on the

ESA board and sees it as a backward step. The needs model, which seems to be a new policy coming from area board planning, outlines three subsets: sector A, the controlled sector; sector B, maintained; and sector C, integrated and Irish-medium. Although subsets A and B are allocated four reps each on the board of ESA — four persons to represent the interests of transferors of controlled schools and four to represent the interests of trustees of maintained schools — there is no such provision for schools in subset C.

1076. Since the Good Friday/Belfast Agreement, the number of integrated schools has nearly doubled from 33 to 62, and the number of pupils has increased from just over 8,000 to over 21,000. We are confident that those numbers will grow significantly in future years. It is, therefore, surely inconceivable that there is no representation for those schools on the board of ESA.

1077. The present breakdown suggested for the ESA board appears to be pandering to the legacy of the past and is certainly not taking into account the new needs of Northern Ireland and the growing support for inclusivity in education. That growing support for inclusivity is clear from several recent surveys, including a very recent LucidTalk poll that is published in the 'Belfast Telegraph' today, which could not have come at a better time for us. I do not know whether you had an opportunity to see it.

1078. **The Chairperson:** I try to leave the 'Belfast Telegraph' to late at night.

1079. **Ms Cowan:** Well, it was good for us that it came early this morning.

1080. **The Chairperson:** I am not getting mauled in it today, am I? I got mauled in it yesterday.

1081. **Ms Cowan:** Question 7 in the poll asked:

- “With education budgets under pressure, if any of the following options were being considered to save money, which would have your most support?”*
1082. The options were: A) cutting back on maintenance on existing schools; B) merging Catholic maintained, state controlled, integrated and Irish-medium schools; C) raising taxes and rates; D) abolishing free school transport for children whose parents are in work. The summary results were as follows: A) 10.2%; B) 60.8%; C) 9.4%; D) 19.6%. So, option B, the merging of schools, is overwhelmingly the most popular choice.
1083. In the past year, the Integrated Education Fund organised seven community events throughout Northern Ireland. These were very well attended and showed an overwhelming support for community involvement in the future of education. A commissioned report on these community events by Professor Colin Knox also made this clear. I will point to one of his findings:
- “there needs to be much more active engagement between the Department of Education, schools’ managing authorities and their ‘customers’: parents, pupils, teachers and governors.”*
1084. This desire for community involvement is also clearly demonstrated by question 5 of the LucidTalk report. Question 5 is here, but it is difficult to read it as the writing is too small. It says:
- “In view of falling school rolls, many schools in Northern Ireland are likely to be closed or merged in the coming years. Who do you think should have the main say in how this is carried out?”*
1085. The options were: A) politicians and civil servants, because they have an overview of the whole education system; B) principals and teachers, who work on the ground in schools day to day; C) the whole community, because this affects everyone. The results were as follows: A) 15%; B) 32.8%; C) 52.2%. I think that those results really speak for themselves.
1086. To me, it is abundantly clear that there is strong support for community representation, which should be represented on the board of ESA.
1087. Another area that the Integrated Education Fund has been looking at closely is the business community. We have had a lot of discussions and talks with people in the business community, and we feel that they are not represented on the ESA board. If Northern Ireland is to succeed in the future, it surely must build a strong infrastructure with a skilled work base. The skills needs of the business community are imperative in achieving that. The business community should be consulted, and education must keep abreast of their future needs skills. If that is done, surely that is the way to ensure that there are jobs for our children and that they stay in Northern Ireland.
1088. The Integrated Education Fund suggests that there is a more realistic, flexible and 21st century approach to the make-up of the board as follows: two representatives each for the transferors of controlled schools; two representatives for the trustees of maintained schools; two representatives for integrated schools; one representative for Irish-medium schools, and, very importantly; three to represent the community in Northern Ireland, and three to represent the interests of the business community in Northern Ireland. We also say that the board should be reviewed every three years. This would give ESA a truer, more realistic and, indeed, more effective board. I will pass over to Nigel, who will continue the presentation.
1089. **Mr Nigel Arnold (Glengormley Integrated Primary School):** I have one key question, which is from three points of view. I am here in a kind of triple role, and I will take each in turn.
1090. First, as a principal, I represent about 300 children of preschool and primary school age in integrated education this year. These families represent thousands of parents and grandparents across the borough of Newtownabbey. Therefore, my question is this: given

- the current proposal for ESA board membership, who will represent these families on the board?
1091. I move to my second role, and my second point of view. I am also a member of the committee of the Association of Principal Teachers in Integrated Schools (APTIS). I am part of a 10-strong committee, which is made up of principals from 62 primary schools and post-primary schools that have in excess of 20,000 pupils in this year, 2012-13. Their families, and extended families, through the past, present and future, represent hundreds of thousands of people, young and old, who have been schooled through an integrated education system for over 30 years. APTIS is the collective voice of the management of those schools. The question is this: who will represent these families and APTIS in ESA?
1092. Thirdly, and perhaps this is the one that is closest to my heart, as a parent of two young children who are in an integrated primary school in Northern Ireland, and coming from a mixed cultural and mixed religious marriage, and having a strong desire for a shared future in Northern Ireland, with education being the foundation of this process, I am asking this question: who will represent my family within ESA? I think that is clear and to the point.
1093. **Dr Ian McMorris (Northern Ireland Council for Integrated Education):** We are asking that the statutory obligation on the Department to facilitate and encourage integrated education, which exists under Part VI of the Education Reform (Northern Ireland) Order 1989, in article 69, is enshrined in the Education Bill. The Statutory recognition for integrated education in the 1989 Order is as follows:
- “It shall be the duty of the Department to encourage and facilitate the development of integrated education, that is to say the education together at school of Protestant and Roman Catholic pupils.”*
1094. In order that the statutory obligation is enshrined in the Education Bill, we are seeking these three amendments: Clause 2(5) states:
- “ESA shall ensure that its functions relating to grant-aided schools are (so far as they are capable of being so exercised) exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school.”*
1095. We would like to see “or integrated school” added. That is simply adding in after “Irish speaking school” “or integrated school”.
1096. Chairman, our amendments are in our paper, which we will leave behind for the Committee.
1097. Our second amendment relates to clause 60, which states:
- “60. For Article 3 of the 1989 Order substitute -*
“General duty of the Department and DEL
3. -(1) It is the duty of the Department -
(a) to promote the education of children and young persons in Northern Ireland;”
- We would like to add:
- “and to facilitate the development of integrated education at primary and secondary levels”.*
1098. Similarly, substituted provisions at clause 61(1) of the Bill providing for substitution of provisions in article 115 of the Order 1986 should make the provision for the payment of grants to persons in respect of an expenditure to be incurred by them.
1099. We would like to add a fourth paragraph at clause 61(1) to read:
- “(d) for the purpose of or in connection with the promotion or encouragement of integrated education at nursery, primary or secondary level.”*
1100. Those are the changes that we are seeking. I would like to talk briefly about why we are seeking them. Recognition of the singular importance of integrated education was set out in the 1998 Agreement, which states at paragraph 13:
- “The participants recognise and value the work being done by many organisations*

to develop reconciliation and mutual understanding and respect between and within communities and traditions, in Northern Ireland and between North and South, and they see such work as having a vital role in consolidating peace and political agreement. ... An essential aspect of the reconciliation process is the promotion of a culture of tolerance at every level of society, including initiative to facilitate and encourage integrated education”.

1101. We note with concern that nowhere in the Bill is there a reference to that duty to encourage and facilitate integrated education. We ask that this omission be rectified and that this obligation be expressly stated in the Bill. Specific reference to integrated education was written into both of those important documents in recognition of the role that integrated education plays in healing division, breaking down barriers and promoting cohesion. It is worth remembering that, prior to the successful establishment of the first integrated school in 1981 — Lagan College, of which I am chairman — followed by three other integrated schools in 1985, it was contested by the main sectors — the political parties and the churches — that there was neither the demand nor the need for such integration. That was in spite of a background of ongoing civil unrest and violence fuelled by the divisions in society. Parental demand for integrated education has proved otherwise.
1102. Brian Mawhinney, who was then Minister of State with responsibility for education, saw the need for those schools and ensured that protection for integrated education was written into the Education Reform Order 1989 as well as a mechanism for funding and developing such schools. The importance of that type of education to supporting the peace-building process was further recognised in the Belfast Agreement. The obligation was written into both the legislation and the international agreement because of the deeply segregated system of education that existed in Northern Ireland, a segregation that reflected the deep divisions that were played out in

the violence endemic on the streets. Those divisions still exist and must be addressed if we are to build a shared future.

1103. Thirty-six years on from the inception of integrated education, we are now educating 22,000 children, which is about 7% of the student body. More than 90% of children are still educated in single-identity schools. This year, more than 500 children were denied a place in an integrated school, and the number of children being educated in integrated schools would be significantly higher if schools had been allowed to grow to meet demand. As Marie said, public opinion as expressed in opinion polls is overwhelmingly in favour of integrated education, and I point out the Ipsos MORI poll of 2011, and the ‘Belfast Telegraph’ poll of 2012. It is the concern of NICIE that, over the intervening years, the statutory obligation as outlined has not been fully addressed by the range of education bodies, resulting in a failure to challenge adequately the status quo, as evidenced by the contrast between those supporting integrated education and actual places available. In addition, official figures do not take into account special schools, which are, by their nature, integrated, in that selection is not on the basis of culture or ethnic or religious background. Under the statutory regime, those schools are prevented from formal designation as part of the integrated sector. That does not, and should not, obscure one of their defining characteristics. That hidden integration is not recognised. An overt commitment to facilitating and encouraging integrated education will enable those issues to be addressed as of right. NICIE argues that to redress the situation, the Education Bill must contain reference to the statutory obligation to facilitate and encourage integrated education. I will now pass over to Noreen.
1104. **Ms Noreen Campbell (Northern Ireland Council for Integrated Education):** Good morning, everybody. My colleagues have shown clearly that the moral and societal case for integrated education

- has been made. The public preference is clear: people want their children to be educated together. The legal obligation to encourage and facilitate integrated education is enshrined in law. I want to refer to a point made earlier by Trevor. He suggested, or seemed to suggest, that that legal right was to support a sector. It is not; it is to support a concept. Historically, because of how our schools developed, they have been pigeonholed into a sector, but integrated education is a concept, and we might well describe it as the concept that is full-immersion shared education. When we talk about shared education — and we are totally in support of it — we do so because we have full immersion sharing. We have developed the model that ensures that it works, and we want to ensure that that is reflected in the Bill so that the legal obligation can be translated into reality in the outworkings of the Bill.
1105. I want to look in more detail at some of those outworkings, particularly in relation to area-based planning. There are some proposed amendments that we would like to make, and, again, I will speak to them briefly, but the actual wording is on paper.
1106. We want clause 25(3) modified. At the moment, it says:
- “The Department may approve a plan or revised plan.”*
1107. We want that modified to say that the Department may not approve a plan unless it has satisfied the facilitation and encouragement of integrated education. In other words, the test against area planning should be to what extent it supports the future and creation of a shared future.
1108. We also want to add to that, and this comes back to the point that was clearly illustrated in today’s poll. We would like to see added in there evidence that an area education plan qualifies as satisfying those conditions, and it must include material evidence that the parents of children in an area and children attending schools in an area have been consulted and that their preferences have been accommodated to the greatest possible extent. In other words, we want changes to area-based planning to come from areas up, not from the top down, and we want those done through consultation.
1109. Finally, clause 28(3) refers to the ESA being able to make decisions without reference to the Department of Education. We would like to see added to that that any such decision will only be taken after consideration of the Department of Education’s statutory duties and consultation with the Department.
1110. The ESA has been delegated the duty of planning education provision. Area-based planning could shape a new education estate fit for purpose and meeting the needs of children, not institutions, and areas, not sectors, as directed by the Minister. To date, however, the model used to frame the area-based planning process is deeply flawed, based on a sectarian headcount of children in the straightjacket of existing sectors. Not surprisingly, innovative and creative solutions have not been forthcoming.
1111. NICIE had no place as of right at the area-based planning table. We feel that that omission has impacted detrimentally on the process, and we want to see that situation rectified under the ESA. We feel that it will be rectified if we have representation on the board as of right and if the statutory obligation is written into the board.
1112. NICIE is concerned that the duties outlined in the Bill do not allow sufficient strategic powers to enable future decisions based on the principles outlined by the Minister in ‘Putting Pupils First: Shaping Our Future’. Such a framework was developed at government expense in 2006 through the Bain report, which was well received by all. NICIE argues that the framework for area-based planning should be defined in the Bill and that it should be based on the recommendations of the Bain report, along with the sustainable schools policy and the statutory obligation referred to. In particular, we ask for the

following recommendations of the Bain report to be considered:

“We acknowledge that integrated schools make a highly significant and distinctive approach to educating children and young people together... In light of our thinking on integrating education and improving collaboration, we believe that the time is right for the Department of Education to make clear that in discharging its duty to encourage and facilitate integrated education, it is committed to facilitating and encouraging an inclusive strategy with a variety of meaningful approaches. We also advocate in undertaking these functions in relation to the planning of the schools estate, there should be a duty on ESA to maximise opportunities for integrating education in a system of sustainable schools.”

1113. The Bain report provides a framework on which decisions on area-based planning should take place, one being the educational case and the other being the societal case, that is, the importance of promoting sharing and cohesion for the future.
1114. The Bain report provides a useful definition of areas that should be adopted.
- “Local areas should comprise coherent sets of nursery, primary and post-primary schools, and, as appropriate, special schools, as well as successful further education provision, and, as far as possible, should lie within single local council boundaries.”*
1115. Had the Bain principles underpinned area-based planning to date, I think that we would have seen a more radical set of plans. NICIE has concerns about the apparent absence in the Bill of a mechanism under the ESA for establishing new integrated schools. Schedule 7(4) refers to the powers to open new controlled schools, other than integrated, and new Catholic maintained schools. There must be a mechanism under the ESA to open new integrated schools, whether those emerge as a result of the closure of schools and the foundation of a new integrated school or because of the need to ensure integrated provision in every area.
1116. It is our concern that the mechanism that exists under the 1989 Order has been superseded by the process of

area-based planning, which resides with the ESA.

1117. The amendments that we have suggested would ensure that consideration is given to the promotion of the integrated model. The Education Bill allows for a consultation process on any development proposals, and Bain in recommendation 3 states that:
- “in area-based planning, the Education and Skills Authority would have the option of consulting directly with communities to ascertain views and options for educational provision”*
1118. The amendment that we propose would ensure that such consultation took place.
1119. I would like to finish by welcoming the extension of the consideration of the Bill because there is an opportunity to further enhance the Bill by looking at a mechanism for creating a new type of school management. At the moment, we are in a straightjacket with regard to the type of school management that we have, and until we can find a type of management that is beyond sector and which allows us to create the type of schools that we want for the future, I think that even in the ESA we will not move forward as quickly as we would like.
1120. I would like to think that between now and April, NICIE will come back with proposals on how such a new type of management might be written into the Bill, thus advancing change in the educational system.
1121. **The Chairperson:** Thank you very much for your presentation. I declare an interest as a member of the board of governors of a controlled integrated school and also place on record the appreciation of the work of the schools that you represent. That is right and proper. Ian will be particularly pleased with the recent announcements on a long-awaited newbuild.
1122. **Dr McMorris:** I cannot wait, Chairman.
1123. **The Chairperson:** I want to pick up on a point that Nigel made and, if I may be rhetorical, answer a question with a question. You asked who would

- represent the three elements in the ESA. In your view, who currently represents those three views?
1124. **Mr Arnold:** As it currently stands?
1125. **The Chairperson:** Yes.
1126. **Mr Arnold:** The people here: NICIE, the IEF and like-minded individuals. However, they do not have that position. It is not being recommended in the current proposals.
1127. **Ms Cowan:** Until now, the Department has had a statutory duty to encourage the growth of integrated education. Therefore, as a retired principal, I felt quite happy to go to the part of the Department that was designated to integrated education, where I got a lot of help. Because the Department puts a duty on the boards to give the same facilities to integrated schools as to other schools, I could also have gone there. I could go to the solicitor for all five area boards in Belfast for any help that I needed. Therefore, because the Department had a statutory duty, I felt that we were well supported.
1128. **Mr Arnold:** I am speaking as a parent here, which is difficult to separate from my other roles at times. I am speaking as a parent on behalf of parents in my school and in other integrated schools. On that third point, I would go to me as a principal or to my colleagues, as other principals, in the Association of Principals in Integrated Schools (APTIS). We seem to be protecting and looking after ourselves and speaking on one another's behalf. My worry is that in the ESA we will not have a spokesperson. Perhaps you might consider APTIS as part of my answer.
1129. **Ms N Campbell:** The absence of representation for integrated education as a duty on the boards has prevented representation of the voices that Nigel mentioned. I would add another voice: those who have been denied an integrated education, who, over the past 30 years, sought one and could not get one, either because there was no integrated school in their area or because the school that was in their area was oversubscribed. Each year, up to 500 families are denied an integrated education. NICIE argues that point all the time. However, we are a very small body, and we have no statutory responsibility. IEF also argues that all the time as evidence to fund raisers of the need for outside support for integrated education. However, we should not be seeking outside support for something that is patently such a good idea for society. We should be saying clearly through statutory bodies that it is an important part of our education system and that it should be represented.
1130. **The Chairperson:** NICIE will have a view on the announcement that was made yesterday by the North Eastern Education and Library Board, which impacts on an integrated school in Ballymena. You may have seen it. It indicates that even though the board took a view, it did not take a view outside giving due consideration to an integrated school, because it has gone as far as saying that it would make provision to have a site owned by a controlled school made available to an integrated school.
1131. **Ms N Campbell:** Thank you for sharing that with me, Mervyn. We are NICIE, the body that promotes integrated education, but because of how area-based planning has taken place, we have not seen the final plans that have gone to the board. Therefore you are telling me something that I did not know. Frankly, it is shameful that we do not know; it is shameful that our schools do not know, and unless we get the Education Bill correct, that situation will continue to be replicated under the ESA.
1132. **Dr McMorris:** Chairman, going through the Bill, I found it breath-taking how little mention there was of the sector that has probably been the biggest force for change and development in education in Northern Ireland. Irish-medium education, which is a much smaller sector than ours and which has far fewer pupils — and, I would say, on the basis of opinion polls, it has lower overall support — is mentioned and we are not,

- neither as a sector nor as a movement. There are one or two mentions. I found it extraordinary.
1133. **The Chairperson:** Marie referred to the increase in the number of integrated schools over recent years. This is probably a loaded question. From your point of view, is the increase in the number of parents having or wanting access to an integrated school due to, first and foremost, its being an integrated school or, secondly, because it is a good school? I know from experience in my constituency — you know the school I am referring to in Ballymena —
1134. **Ms Cowan:** I totally agree.
1135. **The Chairperson:** How do we, as a Committee, square that with all the other paths?
1136. **Ms Cowan:** As a parent, I believe that it is crucial that an integrated school be a good school. Both my children went to the school that I ran, and they would not have been there had I not known that it was a good school. First and foremost, it has to be a good school.
1137. Perhaps that is what the Integrated Education Fund is about. We try to ensure that when the Department of Education does not provide funding for our schools as we want — for example, many of our schools are looking for play groups and nurseries, and some of our schools were recently turned down for the development of sixth forms — we try to provide funding. We do not have enough funding.
1138. I agree with you: nobody will send their child to an integrated school unless it is a good school. Many parents want integrated education for their children and they then balance that against the school. I was talking to somebody only this morning who is in the lucky position of having more than one integrated school to choose from. That is at second level, and I am afraid that I am very second-level orientated. One of the schools has a good reputation, whereas the other, although closer, does not. You
- can guess which school that person put their children down to go to.
1139. **Dr McMorris:** Chairman, as the chairman of Lagan College, I absolutely go along with what you have implied. Parents will, first and foremost, look for good education. Other things being equal, many parents in Northern Ireland — I would say the majority — if they can get a good integrated education for their children would prefer that over an equivalent non-integrated school. I think that that is the preference.
1140. At our school, we drive academic performance, which is why we have a selective stream. That allows us to be properly comprehensive and replicate, and we find that that attracts parents, as they know that if they have a brighter child, his or her needs will be looked after just as much as a child who is less academic.
1141. **Mr Arnold:** I am the primary school teacher here, and I want to add to that on behalf of the primary sector. I will use my school as an example. I think that it is a combination of factors. First and foremost, schools have to be good schools to attract parents. If the reputation of a school, holistically and from every angle, is damaged in academic performance and ability, that is detrimental to the development of the school. However, that is dovetailed with parents' demand for an integrated future for their children. My school has doubled its enrolment in the past five years, and I have no doubt that that was because of a combination of those two factors.
1142. **Dr McMorris:** I totally agree. Integrated schools tend to be very strong on the holistic aspect of education. It is not just about academic performance, although you do need that; it is about a broader education for pupils. It is not that other sectors do not do that, but I think that there is an even stronger emphasis on that in most integrated schools.
1143. **Ms N Campbell:** Integrated schools are also inclusive. Therefore as they strive to ensure that the brightest child can

- reach the highest level, they are also concerned that the needs of youngsters with special needs will be met to the highest standards. For the full range of parents and children, the integrated option is very attractive, provided that it is the best school. NICIE, through the Association of Principals in Integrated Schools, in partnership with the Regional Training Unit (RTU) and other partnerships that we are developing, is working to ensure that we have the strong leadership that we need in our schools and a continuous programme of school improvement to make our schools the best.
1144. **Ms Cowan:** We are talking about integrated schools. As a principal, I always said that I knew why pupils came to my school. An Austrian did some research, and she reckoned that 30% to 40% of the children who came to our school were sent there because it was not a secondary or grammar school but was somewhere in between. Therefore nobody knew whether the children who were wearing our uniform had passed the 11-plus or not. That was a very cynical way of looking at it, but I always said that once we get children into a true integrated setting, we will integrate them and ensure that when they leave us they move into an inclusive society where they can take their place comfortably. That is what integrated schools are about.
1145. **The Chairperson:** Noreen, you referred to amendments that you wish for. They will be left with the Committee Clerk so that we will have them for members' consideration.
1146. **Mr Kinahan:** Thank you very much for your presentation. When you talked about a possible new layout for ESA membership, I did not hear where in it we keep principals or teachers.
1147. I was intrigued as to how we get parents involved. I have been trying to find out how we get consultation to happen properly with parents, as there does not seem to be a system. How do you get parents into the same thing so that it represents them?
1148. The three-year review that you mentioned is quite tight; a longer period may be better. Why chose three years? The biggest question of all: we are exploring the difference between shared and integrated education. We are discussing a framework that will set the line for our education system for a long time, so we have to get it right, yet we seem to be dividing into sectors, excluding yours, which is wrong. We need to find a way of pushing, if I understand it right, the sharing — which happens in the maintained sector and everywhere — so that you are nudging and massaging it along at the best speed we can get so that it becomes integrated. Shared is the goal, but integrated, I sometimes find, we lose because it has become a third sector. We lose our aim there.
1149. **Ms N Campbell:** The concept of integrated education has suffered by being pigeonholed into a sector. Integrated education was educating children together in an ethos that promoted parity of esteem and mutual understanding and respect. That is what our integrated schools do.
1150. How do we get from where we are to where every child can benefit from that right? I see it as a human right for them to be educated alongside their friends, peers and neighbours. In recent years, the concept of shared education has come in as a means of moving towards that. We are still a highly segregated society, but the question is how we move from A to B. It will be a journey, and there may be different ways of doing it, but any progress has to be good.
1151. My concern is that shared education becomes a sticking plaster to conceal the fact that we are still segregated and bi-sectoral. All the evidence from education for mutual understanding and the collaboration that is going on shows that such partial contact does not have a deep impact. We have to find the means of ensuring maximum sharing and impact. NICIE has a project funded by the International Fund for Ireland (IFI) called 'Sharing Classrooms: Deepening Learning'. It is about enabling teachers who are teaching in a more diverse

- classroom than they normally teach in to engage young people in real discussions about their society.
1152. The example that we use is poppies. If you have children from two uniforms in your classroom, and one set is wearing the poppy and the other is not, there is a huge opportunity for discussion. Young people love to discuss such issues; they are completely open and willing to learn about one another. However, because the teachers have come through a segregated system, including third-level education, they do not have the confidence to deal with those issues. A huge amount has to be done to give teachers the confidence to deal with the diversity in their classroom and the increasing diversity that we hope they will see in their classroom.
1153. It is also our belief — and I am sure that Marie would agree — that, no matter how you describe your school, the children in that school are all individuals. There is huge diversity in any school, and when you put a single identity label on a school, you penalise those young people, because they do not have an opportunity to develop their full range of identities. The best example is of children from a mixed marriage: if those children are in a Catholic area going to a Catholic school, they are de facto Catholic; similarly, if they are in a Protestant area going to a state school, they are Protestant. No recognition is given of their double belonging, and that is not the way for our children to be developed.
1154. **Ms Cowan:** I want to go back to representation I mentioned community engagement events that IEF held over the past year — seven in total. Very few politicians came to them, although we had some, and we had a representative from CCMS at every one — somebody from the boards. However, most were parents or members of the community who expressed the desire to be involved in education. That is why we have been having follow-up events. We had one not long ago in Derry, at which parents came out very strongly in favour of different choices for their children. Not every
- parent wants integrated education, nor would we force integrated education on people against their will, but parents want opportunities for their children to be educated together. That is why I feel that the Department of Education, and perhaps the Committee, should be involved. We should not have to do community engagements, but we are doing them because nobody else is. However, we have been amazed at their success and the number of people who have come along and said what they want. The Department of Education has shown a bit of interest; it has asked us to say how we set about doing them and how they succeeded.
1155. However, there should be much more engagement with parents. I talked earlier about three community representatives. I think that we were thinking about parents as being one of those community representatives. Why not? Three businesses — again, business people may be parents as well. That is crucial. It is interesting that that has hardly been mentioned. We talk about trying to develop basic skills in Northern Ireland, and we have STEM and all the rest of it. There has been a great deal of talk recently about the fact that universities may not always be the right place for people and that children need other skills, but we need our business people to tell us what those skills are, as we do not know. We all need to take much more account of that before we set statutory rules that would tie us all in a straitjacket. We need to take our time; it is too important not to get it right.
1156. **Dr McMorris:** You were saying, Deputy Chairman, that there is a very strong representation of the churches and the politicians and that the rest of us are not getting much of a look in. We totally agree. It needs to be more pluralist, and it needs to represent society as a whole.
1157. **Mr Arnold:** I want to go back briefly to Noreen's point and mention the risk that I think is apparent in the different models that are coming on to the marketplace — for the sake of another phrase. I am worried that the concept of the integrated education model is

being watered down massively in a shared model. I am not suggesting for a moment that any of the models of shared education are not useful, and, for that reason, my school, although it is fully integrated, also participates in many of those mechanisms. I have had more than 20 years of working through education for mutual understanding and community relations and equality diversity (CRED) and similar models. However, I still feel that they often just scratch the surface. I found that, after all the energy and work that went into CRED, it is very disappointing at a chalk-face level, and the delivery of that model does not meet the agenda that was set out. That is my personal view. Yet, we participate; we apply for funding to assist us with projects and we involve ourselves with other schools outside the integrated sector because we see that there is value in that. However, it is not the fully immersive model that Noreen referred to, which, essentially, is a 24/7 concept that, over time, seeps out into the community and into the society where those schools are located. I do not think that any of your models of shared education will have that same impact, particularly at the moment, when CRED is looking at a bigger picture beyond the two main traditions and looking very closely at trying to accommodate section 75 groups, which I welcome. However, the agenda is there for a steered and slightly wider, different direction, and the focus on what is at the heart of integration is gone, and the eye has been taken off the ball.

1158. **Ms Cowan:** We have been running the promoting a culture of trust (PACT) programme. It was set up by George Mitchell in 2000, and we have been running it since then. It has been very successful in bringing schools together. However, it is costing a lot of money, and that is the problem with it. Let us look at the economics of it. I am not very good with figures, but I think that £12 million has been spent on PACT, to date. That is a lot of money. The sharing education programme (SEP), which has been running for the past three years and which is still running, has cost millions

upon millions. I go back so far that I was an EMU co-ordinator 30 years ago. I know how successful it was at the time, but, once we separated from the school that we were working with, that was it. On an economic level, all of this money is useful at the time, and it does do a little bit, but it does not do enough. Two or three years down the road, once it is over, it is gone. We should be looking at the economics and at the cost of having children in a single school and the cost of having them coming out for such programmes as PACT and SEP. We should look at the cost of that to our community, which is not a very wealthy place.

1159. **The Chairperson:** No other members have questions. Noreen, you said that you wanted to bring back to the Committee more information around a model.
1160. **Ms N Campbell:** At the moment, one of the problems is that the legislation does not allow for the creation of a new type of school. I might be completely wrong on this, of course, and this might be wishful thinking on my part, but it seems to me that if there were a wee bit more time to get the Bill right, there might be an opportunity to rectify that now. Otherwise, how many years will it take to get that legislation in place?
1161. I will give you an example. One of the proposals that, I think, has gone, or is going, from the South Eastern Education and Library Board to the Minister, relates to the Ards peninsula. There, you have Strangford integrated college, Glastry controlled school and St Columba's. The proposal is that the Ards peninsula will have one school serving the community. I do not know if this is being replicated in the South Eastern Education and Library Board, but it is certainly our ideal. That school would be a bilateral school, which would give parents assurance that academic interests were being looked after, so that children did not have to go outside the area to grammar school. It would be co-educational and integrated. What management would that come under? It could be a grant-maintained integrated (GMI) school. However, you might then

have such questions as, “Why should we be given up?” There is all of that history that we have of giving up. We need to create a mechanism in which people are not giving up but creating and collaborating together to create something new.

1162. There is a type, which I have been putting in inverted commas — a “new model school”. It is post-primary, but it is the same as your best primary school. It serves the community, it is co-educational and it is bilateral. Hence, it takes away all of that argument about grammar schools, selection and academic ability. It is also integrated in ethos. By that I mean that there is parity of esteem for the different traditions in the school, and there is a development of mutual understanding about where young people are coming from, their traditions and cultures and why they may be controversial. There will be the capacity to deal with that. There will also be mutual respect, and it is an environment in which people learn to live with each other, respect differences and diversity, celebrate it and not be frightened by it.
1163. **Dr McMorris:** The board can represent the contributory interests.
1164. **Ms N Campbell:** The board can represent that.
1165. **The Chairperson:** Would you call it a community school?
1166. **Dr McMorris:** In the true sense of the word.
1167. **Ms N Campbell:** We do have some community schools, and, essentially, it would be a community school. I would like to think that there is hope, since there is a bit more time to get that into the legislation.
1168. **The Chairperson:** I want to give clarity on time. We went to the Assembly for an extension, and it was approved, albeit until 8 April. It is not our intention to run the Committee Stage until then. The sooner that we can have any information on your idea or model, the better, because it can be part and parcel of

the deliberations that we are going to have. Our intention is to have all of the evidence gathered by Christmas and to go through the Bill, line by line, after Christmas. That will be very detailed. By that stage, we will want to ensure that we have sight of all the amendments that people have. We basically have those at this stage. We also want to have any other ideas or suggestions, so that people have confidence that we have not merely given them tea and sympathy and moved on because we had our own agendas. We want them to have confidence that it was not done and dusted behind closed doors. We do not want them to have the impression that we were engaged in such tasks. The sooner that we have any information that you have, the better.

1169. **Ms N Campbell:** I will do that. I appreciate that it may not be appropriate for the Bill at this time.
1170. **The Chairperson:** Due consideration should be given.
1171. **Ms N Campbell:** I will get that to you.
1172. **Mr Arnold:** I want to go back to Danny's mention of the consultation with parents. You are working towards a part solution on that. You are working with such bodies as PTANI. I know that they are making contact; they made contact with me to get small groups of parents in. Obviously, you are getting the active parents within the school community; you are not going to tap into those inactive or passive parents. They are harder to get. We have that problem too. I am delighted that you have used that mechanism, and I think that Jayne Thompson is going to bring you quite an audience for January. I am glad to see that that is happening.
1173. **The Chairperson:** We have endeavoured to ensure that people are listened to, regardless of whether it is about area planning or the youth. We had what I thought was a very successful event here last Wednesday. Those who took part genuinely believed that they were being listened to and that there was an engagement process. We are keen to

build on that. We can do it better, and, clearly, the interaction with the parents association and others is part and parcel of what we are about. There will be interaction with others, but we have not yet finalised details on who else we need to be involved with. Nigel, have you any ideas or suggestions to add?

1174. **Mr Arnold:** That was very apparent at the area based planning meeting that I was at. There are mechanisms, and electronic and social media, for example, are able to capture those audiences much better than anything previously.
1175. **Ms Cowan:** You made a very important point, Mervyn, about being listened to. I think that that is what it is all about. We had a programme last week in Belfast, and it was very well attended. They had great ideas. When I was leaving, my worry was about what was going to happen to all of the ideas of those students and young people from youth clubs. They had great ideas, but where do they go with them? We have done a report on that, and we can let you have that. You will see what the youth came up with, because they had some brilliant thoughts.
1176. **The Chairperson:** Thank you very much. I hope that you do not feel that you have been constrained in time. We have an agenda that we are trying to follow as best we can. I make it very clear to all the groups that come that they should not believe that being here is the last opportunity that they can have to represent themselves, albeit it might not be, physically. If anything else comes up, following on from your presence here today, please communicate with us, and we will be only too glad to ensure that that is considered. Noreen, it would be very helpful if you could forward that information to us.

5 December 2012

Members present for all or part of the proceedings:

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

Witnesses:

Mr Liam Mac Giolla Mheana *Comhairle na*
 Ms Nodlaig Ní Bhróllaigh *Gaelscolaíochta*
 Dr Micheál Ó Duibh
 Mr Caoimhín Ó Peatáin

1177. **The Chairperson:** I thank and welcome to the Committee the representatives of C na G. Thank you for taking the time to come here and for your very detailed submission on the issues that you want to raise. I am entirely in your hands as to who will speak on behalf of the group, and members will then be able to ask questions.

1178. **Mr Caoimhín Ó Peatáin (Comhairle na Gaelscolaíochta):** Mr Chairman, I am the chairperson of Comhairle na Gaelscolaíochta (C na G). On behalf of the board of Comhairle na Gaelscolaíochta, I would like to thank you and your Committee for giving us the opportunity to present our concerns about the new Education Bill.

1179. To introduce our group; on the far side is Dr Micheál Ó Duibh, who is our chief executive. With him are Ms Nodlaig Ní Bhróllaigh, who is our senior development officer, and Liam Mac Giolla Mheana, who is a senior education officer. Dr Ó Duibh will make our initial submission.

1180. **Dr Micheál Ó Duibh (Comhairle na Gaelscolaíochta):** Go raibh maith agat, a Caoimhín. A Chathaoirligh, tá mé buíoch díot agus buíoch den Choiste as

cuireadh a chur chugainne agus as deis éisteachta a thabhairt dúinn.

1181. I would very much like to thank the Committee and echo my chair's welcome of the opportunity for us to explain our submission in greater depth.

1182. By way of introduction, Comhairle na Gaelscolaíochta is a council that is sponsored by the Department of Education (DE). It was established as a direct consequence of the Belfast Agreement under the statutory duty to encourage and facilitate Irish-medium education (IME). Article 89 of the Education Order 1998 allows DE to pay grants to a:

"body appearing to the Department to have as an objective the encouragement or promotion of Irish-medium education."

1183. It is in that context that our body was established. Our functions are to provide assistance and advice in the establishment of Irish-medium provision, to promote the interests of Irish-medium education in promoting standards of good practice in schools and to represent the Irish-medium sector in broad terms.

1184. To give you an understanding of the Irish-medium sector; in this part of Ireland, there are currently over 4,600 pupils in the sector, attending 46 preschools, 36 primary schools and four post-primary schools. We estimate that, within the next 10 years, we will see a growth in the Irish-medium sector, bringing the number of pupils to between 8,000 and 10,000. Currently, 511 members of staff work in Irish-medium schools. There are Irish-medium schools in the controlled sector, in the Catholic maintained sector and in the other maintained sector. In conjunction with the Northern Ireland Council for Integrated Education (NICIE), we have attempted to establish Irish-medium provision in integrated schools. We have not been successful as yet, but

- we will continue to try to encourage that provision and option within Irish-medium education.
1185. On a North/South basis, over 50,000 pupils attend Irish-medium schools. If we look on an east-west basis, taking in here and also Scotland, we are talking about 6,000 pupils in Irish-medium schools. Indeed, outside the UK, there is an Irish-medium school on the Isle of Man. That gives you an overall context.
1186. The role of our organisation is to represent children, staff and schools in the sector and families and the wider Irish-medium community. We also advise the Department in all matters relating to Irish-medium education. It is envisaged that Comhairle na Gaelscolaíochta will become the sectoral support body for Irish-medium schools.
1187. Considering the time constraints, with the permission of the Chair, we would like to focus on matters specific to Irish-medium education. I think that it would be helpful to inform the Committee that, when it is considering the Bill, it should be viewed in the context of other legislation, policy, strategic reviews and strategies, namely: the European Charter for Regional or Minority Languages; the Good Friday/Belfast Agreement; article 89 of the Education Order 1998, with its duty to encourage and facilitate Irish-medium education; article 44 of the Education and Libraries Order 1986, which states that pupils shall be educated in accordance with the wishes of their parents; Part III of the Education Order 1997, which includes a right for parents to express a preference for the school to which they wish their child to be admitted, otherwise known as the open enrolment policy; 'Review of Irish-Medium Education Report', which was published by the Department of Education in 2009; and the most recent publication, 'Languages for the Future: Northern Ireland Languages Strategy', which was published in November 2012.
1188. It is Comhairle na Gaelscolaíochta's opinion that the duty to encourage and facilitate Irish-medium education has not been fully considered in the Education Bill nor is it included in many of its parts, and that various amendments and additions will be required to ensure that the Bill is compliant with national and international legislation on this matter. The interpretation of DE's duty to encourage and facilitate Irish-medium education should also be considered in the context of the recent ruling of Mr Justice Treacy, who stated:
- "I do not accept the respondents contention that this duty is merely aspirational. The imposition of the statutory duty has and is intended to have practical consequences and legislative significance ... it may facilitate and encourage the IM [Irish-medium] post primary sector in ways that it need not for other sectors by taking positive steps or removing obstacles which inhibit the statutory objective. This does not appear to have been fully appreciated by the respondent. Accordingly, I consider that the respondent has failed to give proper weight and consideration to its obligation under Art 89 to encourage and facilitate the development of IM education."*
1189. The respondent was the Department of Education. This ruling should guide the Committee when it is looking at and coming to its conclusions on the Education Bill. The Committee should have an appreciation of that legislation and the duty to encourage and facilitate Irish-medium education.
1190. C na G wishes to inform the Committee that the Education Bill does not adequately address the needs of the Irish-medium sector. Indeed, if, in the words of the Minister, we are to put all pupils first, including Irish-medium pupils, there is a requirement to realise the needs of the Irish-medium sector and view its needs in a different context to the needs of other sectors. In that context, C na G would like to present to the Committee its recommendations for amendments/additions to the Education Bill, and to do so in its role as the DE-sponsored council responsible for the provision of Irish-medium education and for developing matters in that area. In all of this, our focus is on children; to be precise, on those 4,691 children in Irish-medium schools. Our focus in all of our recommendations is on ensuring

- that they are properly represented in the Education Bill and that their rights are respected.
1191. You will have noticed that we have suggested a number of major and minor amendments in our submission. We would like to focus on five major areas. Those are the functions and general duty of the Education and Skills Authority (ESA), which is under suggested amendment 2; membership of the ESA board of directors, which is under suggested amendment 17; Irish-medium education ethos issues, which are under suggested amendments 4, 10, 11, 12 and 18; the definition of an Irish-medium school, which is under suggested amendments 20 and 5(b); and the role of Comhairle na Gaelscolaíochta as the sectoral support body, which is covered in suggested amendments 14, 16, 19 and 21.
1192. C na G believes that a duty to encourage and facilitate Irish-medium education should be included under the function and general duties of ESA. It is important that this duty is reflected in the duties of agencies of the Department of Education. If we look at the history of how Irish-medium education has been treated, we can see that it is very clear that the approach that one education and library board may have had has been, to put it nicely, different from that of another education and library board. One board's interpretation may be totally different from another board's interpretation. I think that this is a great opportunity to put that right and for everyone to be singing off the same hymn sheet when it comes to Irish-medium education.
1193. The approach to Irish-medium education has been sporadic and has, at times, been based on earmarked funding through those agencies. It is not just education and library boards but other agencies of the Department of Education. There has been no obligation on these agencies to support Irish-medium education, and the people who suffer are the pupils in Irish-medium schools. If nothing else, Irish-medium pupils should at least be granted the same rights and opportunities as pupils who attend English-medium schools. Inclusion of this reference and of the duty to encourage and facilitate Irish-medium education would address a lot of those issues and would help to form a structure within ESA that would address the needs of Irish-medium education.
1194. Turning to the most obvious stuff, we have had a review of Irish-medium education. A vast number of those recommendations have to be implemented by ESA. If ESA does not have a particular duty to encourage and facilitate Irish-medium education, it will be very problematic and difficult for ESA to focus on the recommendations of the review of Irish-medium education.
1195. I want to focus on the membership of the ESA board, but, before we talk about that, we need to have a realisation. I started my presentation by saying that Irish-medium education is available in all schools. Irish-medium education is not only a sector but a form of education. In Irish-medium schools, we have mainstream education and immersion education. So, there are Irish-medium controlled schools, Irish-medium Catholic maintained schools, Irish-medium other schools and, hopefully in the future, Irish-medium integrated schools. It is a different system of education, so we have to have an Education and Skills Authority that is fit for purpose and that can address all of those needs. Everything that you require for mainstream education to make it fit for purpose, you require for immersion education, which is the type of education in Irish-medium schools.
1196. We find it rather puzzling that appointments to the board of ESA have gone out to advertisement in the papers given that we are currently engaged in consultation. We find that rather baffling. Comhairle na Gaelscolaíochta would question the consultation process and the appointment process if we can progress with appointments before consultation and before everybody is happy with the Bill. That needs to be reflected, and that comment has to

be made. I have mentioned that there is no representation for Irish-medium education on the board, yet we have 4,600-plus pupils and growing. Those pupils are entitled to a voice, as are the teachers and all parents who choose Irish-medium education. If we are to have a fit-for-purpose body to encourage and facilitate Irish-medium education, the sector needs to be represented at a very strategic level, indeed at board level. We need to have an expertise on the board; someone who understands immersion education. It not just a matter of right and equality but of an understanding, so that other sectors can be advised of the requirements of Irish-medium education. I also think that it is a matter of right and that it is an equality issue.

1197. To put it as simply as possible: where is the voice for Irish-medium education on the board, and where is the expertise for immersion education on the board? Who will advise on the needs of Irish-medium education and Irish-medium controlled, Catholic maintained, other maintained and, potentially, integrated schools? Are the 4,691 Irish-medium pupils and Irish-medium schools being represented here? We have to ask ourselves those questions. We should, by right, have representation on the board. It is a structural issue. If we have appropriate structures in place, we will have an education system that meets the needs of all pupils. If I am asked to — hopefully I will be — I can expand on the differences between immersion education and mainstream education.

1198. The ethos issue is rather complex. It has been covered in our suggested amendments 4, 10, 11 and 12. This is something that the Irish-medium education sector is passionate about. No doubt other sectors are passionate about it as well. C na G is concerned that the protection of the Irish-medium ethos, which is the defining characteristic of Irish-medium provision, is not being afforded the same protection as that of other sectors. Provision is made to allow the trustees of Catholic-maintained schools to be regarded as

submitting authorities for the purpose of submitting schemes of employment. However, no provision is made for trustees of other schools, including Irish-medium schools. We have to address that issue.

1199. The long-term maintenance and protection of the distinctive characteristics of Irish-medium schools should be vested in trustees. No one has consulted the trustees of Irish-medium schools — not as far as I am aware, anyway. I have written to the Department of Education to ask for a reply on that matter. The role of that ethos issue is entrusted to boards of governors, but, ultimately, it lies with trustees of schools. We have to have an input. That constitutes the whole essence of Irish-medium education. It would be rather easy to just go to an English-medium school, but it is about an ethos. An ethos is important. I am sure that everybody on the Committee appreciates that.

1200. I am conscious of time, so I will try to make my way through this as quickly as I can. These ethos issues are as relevant in controlled schools, Catholic-maintained schools and other maintained schools. It is about identifying characteristics of Irish-medium education that are relevant to all of those schools. A substantial amount of work is required in that regard. That has to be reflected in the Bill. We have to respect the rights of those who choose Irish-medium education. Trustees are responsible for ethos issues. We do not think that that is reflected in the Bill in any way that would give any strength or assurance to the Irish-medium sector.

1201. The current definition of “Irish-medium school” is:

“a school is an Irish speaking school if more than one half of the teaching of—

(a) religious education; and

(b) the minimum content of the areas of learning other than that called Language and literacy,

is conducted (wholly or partly) in Irish, and ‘school’ includes part of a school.”

1202. That is how we define an Irish-medium school. I think that we can be more simplistic about it. The review of Irish-medium education gives a very clear definition of Irish-medium schools. It defines an Irish-medium stand-alone primary school as a:

“school teaching through the medium of Irish”.

1203. It defines an Irish-medium stand-alone post-primary school as a post-primary school teaching through the medium of Irish. It defines an Irish-medium unit as a:

“Setting attached to an English-medium school where the curriculum is delivered through the medium of Irish”.

1204. It defines an Irish-medium stream as a:

“Setting attached to an English-medium school, where the curriculum is delivered partly through Irish and partly through English”.

1205. Those definitions are far more relevant. Indeed, there is no mention of Irish-medium in any part of the Bill; it is all about Irish-speaking schools. I wonder about that definition. I think that it is easily amended and that this is a good opportunity to do that.

1206. Irish-medium schools are currently designated as other maintained schools. Consequently, they have no legal status as Irish-medium schools. Other schools have legal status, so why do Irish-medium schools not have a legal status? We seek to have that changed in the Bill so that we give Irish-medium schools legal status, as other schools have. Legal status is always provided for Catholic-maintained schools, controlled schools, voluntary grammars, and so on. Why not for Irish-medium schools as well?

1207. Comhairle na Gaelscolaíochta has a role as a sectoral support body. It is reflected in our submission in suggested amendments 14, 16, 19 and 21. Currently, there is no legislation that states that Comhairle na Gaelscolaíochta has to be consulted in the establishment of Irish-medium provision. If we were established as the body to strategically develop Irish-medium education, surely we should

have an input into where provision will be established in the future. If we have a legislative right to do that, it will certainly help and assist the development of schools in the context of area planning and the development of all schools in the sector and other sectors. In terms of amendments, under “Proposals as to primary and secondary education” we recommend the following addition:

“... an Irish-medium school is submitted to ESA under paragraph (2), the person making the proposal shall consult with the Irish-medium sectoral body”.

1208. I am sorry if that did not come across well. If this amendment is included in the Education Bill, it will ensure equality and assist in strategic development. Currently, anybody can establish a school, but there is no strategic sense behind it.

1209. The Bill provides for the arrangements for the transfer of staff from DE to ESA. However, no similar arrangements have been made for the sectoral support bodies. If services are to transfer, it is only right that there is appropriate provision in the Bill to address this issue for the employees of the current sectoral support bodies. This is simply talking about people’s rights as employees of current sectoral support bodies.

1210. The Bill does not reflect the 1998 Education Order, in which Comhairle na Gaelscolaíochta was established and where article 89(2) states:

“The Department may ... pay grants to any body appearing to the Department to have as an objective the encouragement or promotion of Irish-medium education.”

1211. This is not reflected in the Bill. It should be in the Bill in order to meet the needs of Irish-medium education and have that interface between the sectoral support body, ESA, and DE, and, indeed, the Inspectorate.

1212. I thank the Committee for inviting us. I welcome questions and clarifications on any matter.

1213. **The Chairperson:** Does anybody else want to make any other comments?
1214. **Ms Ní Bhrólaigh:** I would like to make a couple of points. I have a general point in relation to statutory duty, which needs to inform the entire process in terms of the provisions of the Bill and the structure of ESA. I know that you are at the stage now when the third tier is being considered as regards appointments. So far, there are five directors in the second tier, none of whom have been identified who are knowledgeable in relation to the Irish-medium sector.
1215. With regard to the top tier, at board level, I refer to a comment that Mr Kinahan made in interview, which is available on the website, in relation to checks and balances. Obviously, if there is a statutory duty on the education board to ensure that Irish-medium education is to be encouraged and facilitated, there would need to be a checks and balances provision at board level to ensure that that happens. It is simply to keep ESA right legally. It should inform the process, because if the statutory body is not designed or equipped to deal with the needs of the Irish-medium sector, I respectfully submit to members that you have a problem legally.
1216. It should also inform all services across the board that ESA will provide. We had an instance in the Coláiste Feirste case that dealt with the transport service. This is one service that the authority will provide. In relation to that, we hear and see the problem where the DE said that article 89 has absolutely no relevance to article 52 because that is a complete statutory scheme. In other words, this has been designed, it is there and you cannot tamper with it.
1217. Therein lies the difficulty with what we have at the minute. We have statutory schemes that have not been equipped to deal with Irish-medium needs or that are designed or informed by the statutory duty, albeit it is a relatively new statutory duty. I came up against that problem; and the way it is defined in the review of Irish-medium education is that the Irish-medium sector, as a young sector, has come into the education scene here and is a bolt-on process. You have a policy, and you bolt something on to it to deal with our sector.
1218. This is an opportunity now to get it right across the board. In relation to the Irish-medium education report, I refer you to recommendation 21, which is very strong. It states:
- “The Department of Education must ensure that appropriate support is provided for all existing and new schools, subject to their meeting agreed sustainability criteria, and that the needs of Irish-medium education are addressed in a fully integrated way by the Education and Skills Authority in the delivery of its services.”*
1219. Therefore, as regards service provision, this duty has to inform the process across the board.
1220. I am glad to say that I am the chairperson of the first controlled Irish-medium school in the Western Board area. We have had the problem of rules designed for English-medium schools being applied to us. I will give you a practical example relating to the appointment of a principal. We said, “As regards the teaching appointments committee, we would need somebody who knows something about Irish-medium education to sit in and evaluate whether that principal is suitable for our school given its ethos and language element.” The response we got was, “Well, our rules do not allow for that. They do not allow for you to bring an Irish-medium assessor into the board.”
1221. I think that this illustrates the difficulty that arises when you design a certain system or scheme without bearing in mind that there is very new sector for which there is a legal obligation on the Department to ensure that it is not only well catered for, but is actually facilitated, and that that form of education is encouraged.
1222. That is my submission to members. Go raibh céad míle maith agaibh.

1223. **The Chairperson:** Thank you very much. Are there any other comments before we go to questions?
1224. **Dr Ó Duibh:** I would add to Nodlaig's point that we have an opportunity in this Bill to make the current rules and obligations that we have for education fit for purpose to meet the needs of the Irish-medium sector and others.
1225. When Irish-medium education was first established in 1971 at Bunscoil Phobal Feirste in west Belfast, it came into a course that did not meet the needs of Irish-medium education or, indeed, of immersion education over mainstream education. We have an opportunity in the Education Bill. It is a great opportunity. There will be only one chance to do that. We have an obligation to do that.
1226. **The Chairperson:** Thank you. Obviously, the situation in which you found yourselves in Dungiven was interesting. It threw up all sorts of queries and questions as to why and how an Irish-medium school found a home in the controlled sector and why it was unable, or there were not others who were willing, to make an accommodation. That has, obviously, raised some issues.
1227. If I am listening correctly to what is being said, C na G takes the view that the statutory requirement, or duty, placed on the Department to facilitate and promote Irish-medium education has not really delivered what you believed it was intended to deliver.
1228. So, are the proposals set out in the paper that you gave us a means of trying to enhance or redress that? Last week, or the week before, we raised this issue with the Department. It tells us that although the Education (Northern Ireland) Order 1998 talks about Irish-medium education and not integrated education, the same Order, as regards facilitation and promotion, applies to two sectors, the Irish-medium sector and the integrated sector. I do not want to pre-empt anything that Chris will say to us later. However, he will probably say that this is already in the 1998 Order, which is not being affected. So, how do you square that circle?
1229. **Ms Ní Bhróllaigh:** I think that this is your opportunity to square that circle, because if the process is informed by that duty, we will ensure that, across the board, as regards service provision, there is an understanding that this form of education has to be facilitated and encouraged.
1230. If we decide to send children from Glenullin to Maghera so that they can avail of Irish-medium education, services would be informed that although it is not something that they might do ordinarily for the established sector, they have to go a step further for the Irish-medium sector. That is clearly how Mr Justice Treacy saw the obligation. There is no better man, if I may say so. On the statutory duty, he said that:
- "The imposition of the statutory duty has and is intended to have practical consequences and legislative significance."*
1231. However, with regard to the provision of bus services from Downpatrick to Coláiste Feirste, we did not see that statutory duty actually having the intended practical consequence.
1232. **Dr Ó Duibh:** When we look at the duty to encourage and facilitate Irish-medium education, we have to put it in an overall international context. We have to look at the European Charter for Regional or Minority Languages. We have to realise that that is also apparent in terms of Scottish Gaelic, which I mentioned earlier, and the Welsh language, and the progress that has been made in Wales and Scotland to encourage and facilitate Welsh-medium education and Scottish Gaelic-medium education. We should do likewise in terms of Irish-medium education.
1233. The language is a minority language and one that is in danger. We believe that we should encourage and facilitate it and have many languages. Multilingualism is a good thing in any part of any region, and all research reflects the advantages it has in giving some understanding of our culture, background and history. It

- is also very good health-wise and from an economic basis. Why not give all of those opportunities to children through Irish-medium education?
1234. What we have to do as part of our duty to encourage and facilitate Irish-medium language is to address the fact that there is now a choice of education in this jurisdiction. To provide for that, if parents choose Irish-medium education, we have to have a system which provides that choice.
1235. Through no fault of the staff working in the education and library boards and DE, they are trying to fit a square into a circle in the current situation. We have an opportunity in this Bill to address the issue and — as you raised — to address the issue of what it is to encourage and facilitate Irish-medium education.
1236. I imagine that the basis of your question was to ask when we will ever get to the stage when we do not have to do that any more, if I understand you right. If our proposed amendments are incorporated into the Bill, that will go a long way, and DE will be able to stand up proud and say that it is encouraging and facilitating Irish-medium education.
1237. We have other issues regarding accommodation and Irish-medium schools. I could probably count on one hand the number of Irish-medium schools that have brick buildings. The rest are in prefabs. I think that this is unfair on parents and pupils when expecting them to make the choice with respect to Irish-medium schools.
1238. If ESA has a duty to encourage and facilitate Irish-medium education as one of its main functions, everything else, in terms of the structure of the organisation from board level to main functions, should come into place. If it does not, we will have a sectoral support body to ask various questions. It will have that questioning role. I think that is normal, day-in, day-out education.
1239. If we have an ESA that can meet those needs, that will certainly go a long way. It will show that we are in a society that
- is equally open and welcoming to all pupils in all schools.
1240. **Mr Hazzard:** Go raibh maith agaibh. You referred throughout — and rightly so — to article 89 of the 1998 Order, the Judge Treacy verdict, and how the Bill does not seem to take cognisance of the significance of those two things.
1241. Will you outline the dangers for the future of Irish-medium education, and education in general, if the Bill is not amended properly? Also, in recommendation 11.2 you refer to the European Charter for Regional or Minority Languages and how, because it has been ratified by the UK, the Scottish Gaelic and Welsh perhaps do it a lot better than we do it here. What is needed to bridge the gap? What can the Bill do to bridge the gap so that the Irish language in the North is treated with the same respect as Scottish Gaelic or Welsh in the UK?
1242. **Ms Ní Bhrólaigh:** There are some differences between the regions.
1243. Scottish Gaelic schools have only, maybe, 1,000 pupils attending. It just does not have the same popularity, although they do have a language Act, which strengthens their position somewhat. It is surprising that they have a language Act and they actually have a very small number of speakers and a comparatively small number of children attending the schools.
1244. Wales has a very strong Welsh Language Act and therefore has a very good structure. Welsh state schools provide bilingual education, which is actually the preferred choice of pupils. Obviously, they are getting the best services that the state can provide. They are state schools.
1245. One reason why we decided to change status in Dungiven was because we felt that the structure and support that we would get from the controlled sector, as a controlled school, was something we felt would enhance the education that the children were getting.

1246. The European charter has massive consequences for minority languages. There is no doubt that minority languages are threatened. Welsh has become very strong and is not under threat, but the Irish language would be. If we are trying to encourage this form of education, then it is very difficult to do so if we do not have proper service provision. Ultimately, children are being sent to school to be educated. If we cannot ensure a good standard of education, then we can forget about that. If there is to be genuine parental choice about whether people want their children to be educated in an Irish-medium or English-medium school, then it is not so at the moment because parents do not think they will get as good a standard in the Irish-medium option.
1247. We are committed to addressing standards, but we cannot do so without proper service provision across the board in transport, curriculum support and educational resources that are of the same high calibre that you would get in the English-medium sector.
1248. The Irish-medium report looks at all of the areas in which improvement is needed. If you compare our sector to the integrated sector, the one thing that the Irish-medium report looks at is the amount of capital spend in the Irish-medium sector compared to that in the integrated sector. The gap is massive. In fact, the Irish-medium review recommended that the Department look at that gap and try to find a mechanism for addressing it. Obviously, we have the same legal status as integrated education.
1249. **Dr Ó Duibh:** If the recommendations, or our amendments, are not included in the Bill, where will that leave Irish-medium education? There are two sides to this. First, it will probably put Irish-medium education back 40 years.
1250. To the best of their ability, and with the best of the current legislation, the education and library boards are trying to meet needs. We can look at the sector, and at the bodies with responsibility for ensuring a high standard of education — the DE, the ESA, CCEA and DETI. It is challenging for all of them to address Irish-medium schools in a system that is not made for Irish-medium schools or Irish-medium education, and we must be able to assist them in their approach.
1251. One recommendation, probably, is that ETI should have a duty to encourage and facilitate Irish-medium education, because that, in itself, will open a lot of doors and make it a lot easier. It would do what the review of Irish-medium education has been requesting, which is to embed IME into the system; it would look at the system and make it fit for purpose.
1252. This is about children and pupils. None of the children who go to Irish-medium schools has any concept of the other implications of choosing Irish-medium education, but it is a system that does well for them and provides them with a high standard of education. That is reflected in the recent inspectors' report for Bunscoil Phobal Feirste. It is an exceptional school in spite of all the obstacles. It just goes to show that we have Irish-medium schools that, even with all the obstacles and barriers, can still achieve excellence. Why not make it easier and have a system that encourages this, rather than one that makes it such a challenge? The review of Irish-medium education has tried to address that.
1253. The review of Irish-medium education and its recommendations will not be implemented if the ESA does not have a duty to do so. It is very easy to shelve the review and say that it was great and let us move on, or update it, review it, or do something else to it. When we have spent so much time and resources on a review of Irish-medium education, why not have an education and skills authority that is fit for purpose to implement those recommendations.
1254. **Again, to come back to your original question, Chair:** when will we know when we have encouraged and facilitated Irish-medium education? If we can get ESA established and able to

- address those needs, that would take a lot of responsibility off the Department of Education. This is not about how we do it; it is about doing it, and we need ESA to be able to implement recommendations that are already there, rather than consulting again and again and working on it from a very local basis. Let us be strategic and look at this at the regional level, which is what our recommendations and amendments are trying to achieve.
1255. **Ms Ní Bhrólaigh:** I suggest to members that this is an opportunity to get the Irish-medium sector into shape and bring it into line with departmental policy, which is to have equality between the sectors. To have equality between the sectors, when there is a very distinctive one with a language element, requires a sectorally sensitive approach, which we do not have.
1256. **The Chairperson:** That phrase was used —
1257. **Ms Ní Bhrólaigh:** It is an important phrase, which should be borne in mind. That is not to say, however, that the Bill does not try to address the duty — clause 2(5) relates to the duty to encourage and facilitate Irish-medium education — but it gives with one hand and takes away with the other. The clause says:
- “ESA shall ensure that its functions relating to grant-aided schools are (so far as they are capable of being so exercised) exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school.”*
1258. There again, the use of the phrase “Irish speaking school” does not really define the schools or the sector.
1259. We suggest that the words in brackets are taken out, because it is saying on one hand that the functions have to be exercised with a view to encouraging and facilitating the development of Irish-medium education, but it takes them away by using the wording
- “so far as they are capable of being so exercised”.*
1260. The statutory duty does not say that. It does not say that the Department of Education should exercise the statutory duty insofar as it is capable of being exercised, so why should it appear in the Bill?
1261. **Mr Ó Peatáin:** Earlier, Chairperson, you felt a bit surprised that the new school in Dungiven wanted to be a controlled school. I would have thought that it was a no-brainer to be a controlled school with all the expertise of the board at its disposal.
1262. There is a huge amount of expertise in our education and library boards across all education sectors. I worked for the Western Education and Library Board as an adviser teacher in the early 1990s when Irish-medium was in its infancy. With the best will in the world, the board found itself with the problem of how it was going to deal with the new boys on the block. There was no statutory regulation that it felt it had, because it had no expertise in all the sectors, from transport to the curriculum advisory and support service (CASS) to school meals and everything else, and nothing was written into law at that stage.
1263. Now, there is a chance to Irish-medium-proof the Education Bill for all the services that ESA will have. All the expertise from the boards and from the other sectors that will transfer to ESA will be Irish-medium-proofed for the long-term benefit of our schools.
1264. **Dr Ó Duibh:** What is our understanding of Irish-medium education? Is it a system or a sector? We will have to ponder those questions.
1265. Let us imagine that it is a system of education. The Department of Education and the education and library boards deal with mainstream education. In the future, that will be dealt with by ESA. When you are dealing with a system of education, that introduces a whole different context within which we approach Irish-medium education.
1266. If there are Irish-medium schools in all sectors, surely there should be expertise at board level to give

- appropriate advice on what is required of those Irish-medium schools in those sectors. In considering structure levels and function levels, we should be able to address the needs of Irish-medium schools in all sectors, and do so in the context that it is an immersion system. This is a different system to mainstream education and it takes a different approach. We are not expecting anything better for Irish-medium education, but we are expecting a system of education that meets the needs of immersion and mainstream education in its approach. The needs may be equal, but they will also be different.
1267. **Mr Hazzard:** It is alarming to hear that not getting this right could set Irish-medium education back half a century. I spent a morning with Naiscoil Chill Locha in Killough last week, and the positive difference that that preschool has made to the community in Killough has been unbelievable. Local people will tell you that, and I do not need to tell you that.
1268. How important is it that we get the construction of the ESA board right? How would you like to see the board constructed? How important is it that Irish-medium education has a voice?
1269. **Dr Ó Duibh:** Without having a voice at board level, Irish-medium education will be set back. In any board, you would expect there to be the expertise that is necessary to deliver education. If you do not have understanding and awareness of the needs of Irish-medium education or immersion education at the board level of an education and skills authority, those needs cannot be appreciated at the operational or strategic level.
1270. There should be appropriate representation on the board to meet the needs of Irish-medium education. I would even go as far as saying that the representatives from the controlled sector, the Catholic maintained sector and the political sphere on the board should understand immersion education, because that is part of the education system and educational make-up here. If those people do not have the same appreciation of this type of education system as much as they do of mainstream education and English-medium schools in those sectors, they cannot deliver in the way that they would like to and meet the needs of all pupils, including the 4,691 pupils in Irish-medium schools — a number that is growing. We all have a responsibility to do the best we can.
1271. One of the guiding principles of Comhairle na Gaelscolaíochta is the interest of the child, which should be in everybody's interest. We should have an interest in all pupils and be able to deliver an education system that is fit for purpose and will meet their needs. If we do not have that understanding or expertise at board level, we are going against that principle. It would be quite damning on us if we cannot get a system that will meet the needs of all children. By right, Irish-medium education should have a voice on the board, but that should not deter other sectors from appointing the appropriate representatives to be the voices of their Irish-medium schools.
1272. **Ms Ní Bhrólaigh:** The Irish-medium sector is small, but it is a growth sector. So, although, at this stage, you are tailoring ESA for the schools that are under your regime at the minute, this is a growth sector.
1273. One of the recommendations of the Irish-medium review was to increase access; so, we would like to see more Irish-medium schools in the controlled sector. We appreciate that this will not happen overnight, but we have programmes in place to try to increase that access.
1274. In Dublin, a gaelscoil in Ranelagh just got a Better Ireland award because it has children from 17 nationalities. That is where we would like to be. We would like to be where they are in Wales, where everybody goes to the Welsh-speaking state school, regardless of religion or tradition. It will not happen overnight, and we appreciate that, but ESA has to be equipped to deal with it if it happens down the line.

1275. **Dr Ó Duibh:** I also think that it is no excuse to say that this is a small sector. As it is a small sector, and a growing sector, the challenge is greater. We have a lot of educationalists on various education boards and agencies, who are struggling with the challenge of Irish-medium education. We have to support those people in appreciating the needs of immersion education and Irish-medium education. If you do not have appreciation of those needs, you cannot deal with them.
1276. For example, speech therapists may say to the parents of children who have difficulties with English: “Why burden yourself with a second language?”, without appreciating that the second language could help the children rather than disadvantage them. It is being done not from any dislike for Irish-medium education but from a lack of knowledge.
1277. We have to have educationalists who are properly skilled in order to meet the needs of various education systems here. If there is a core function in ESA to do that, then those things, within that structure, should happen automatically. The needs will certainly be addressed. Our system is far from fit-for-purpose at the moment, but if we have one that can address the needs and weaknesses in an education system, all the better for pupils.
1278. This would be far more cost-effective than trying to ring-fence or apply for a grant here and there and submitting a business case here and there to meet a need. What you are doing, in fact, is patching up a system, rather than looking at it, finding its weaknesses and, if you like, taking it through an MOT and coming out good at the other side. This is the approach that we have to take with Irish-medium education. The Bill presents us with an opportunity to address these issues.
1279. There are 24 recommendations in the review of Irish-medium education. I want to talk about accommodation, and I think that ESA could take responsibility for that. I would prefer it if ESA, rather than Comhairle na Gaelscolaíochta, identified appropriate sites and accommodation. It is not within our expertise to do this, but we have to do it because no one else is doing it. If you have an appropriate system, then identifying a site is just that. There is no Irish-medium site or English-medium site: they are all the same. Bring this into area planning.
1280. Let us look at the funding scheme for schools and how we can address that. If the expertise and understanding is in ESA, and there is a relationship between us, as the sectoral support body, ESA, as the education and skills authority, and DE, that relationship will address all those needs and will enhance collegiality and co-operation.
1281. In the past, people were against the system, disagreed with it or were not knowledgeable about it. This will create an opportunity to address those issues. That is how it should be done in a society that is developing. Why not have a society that addresses all education systems and meets the needs of those people? That would be our approach.
1282. **The Deputy Chairperson:** I apologise for the Chairperson having to leave. It was nothing to do with you. You were in full flow, and he wanted to let that carry on. Apologies from Mervyn.
1283. **Mr Rogers:** Nodlaig, you mentioned assessors, and so on, with regard to appointing a principal. Leadership and management are equally important in every sector. How should ESA accommodate that?
1284. **Ms N Ní Bhróllaigh:** It depends on who ESA foresees being in its structures. We are now at the third tier, and, so far, there is nobody representing Irish-medium education or who is knowledgeable about Irish-medium education. If there is somebody there to inform that process, then, as a consequence, the rules can deal with an Irish-medium appointment. That is where the checks and balances would be. Therefore if the situation arises again, and I imagine it will, that there is a controlled Irish-medium school, the appointments procedure will be

designed and equipped to consider the ethos and linguistic element of an Irish-medium school. However, if you do not have somebody there to inform that process, the rules are going to be those for the English-medium sector, and then we will have to try to work it in some way to suit our purposes as an Irish-medium school.

1285. **Dr Ó Duibh:** There are umpteen examples of Irish-medium units within English-medium schools. There is an appointment system for principals of those schools. It is no disrespect to the English-medium school. In fact, there is a high level of education in the vast majority, if not all, English-medium schools, regardless of what sector they are in. What happens in the classroom is of a high standard.
1286. For the past number of years, the structure and how we address and facilitate it; how we have principals with an appreciation of immersion education, English medium and Irish medium; and the fact that we have models of Irish medium and models of schooling, have created conflict rather than a spirit of collaboration and working together. We feel that ESA can address the issues with regard to appointments, at board of governor level and at staff level. Those are issues that we are all aware of, but we do not have systems to address them. We need to address those issues, and the opportunity to do so is in the Bill.
1287. Comhairle na Gaelscolaíochta was established in 2000. We have a wide and in-depth knowledge of the needs of Irish-medium education. We can offer and bring those needs to the table. If they are incorporated into the Bill, we are addressing something so that, in the future, Comhairle na Gaelscolaíochta will not be addressing the same difficulties time in, time out. This is an opportunity to address the issue; let us address it.
1288. **The Deputy Chairperson:** Thank you. You have left us with a great deal to think about from a legal point of view and from the point of view of needing to get the Bill to sort everything out for every sector. We will take that on board.

Please think about what the Chair said earlier: if there is more to come, please ensure that we get written evidence on other points, so that we can take it in before we get to the clause-by-clause scrutiny.

1289. **Mr Hazzard:** As a Committee, we take the Department to task over various areas in which it fails to meet statutory requirements, etc. When it comes to Irish-medium education, the onus to encourage and facilitate has been set. It is not aspirational. Today, we have heard that it is going to be very important that the Committee takes the Department to task over this. There is a requirement to encourage and facilitate, not in an aspirational fashion but in a tangible and palpable way. It will be important for the Committee to consider that over the next few months.
1290. **The Deputy Chairperson:** We will take that on board. We have a lot to sort out in the Bill in many different areas.

12 December 2012

Members present for all or part of the proceedings:

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

Witnesses:

Mr Stephen Gowdy	<i>Governing Bodies</i>
Mr Brett Lockhart	<i>Association</i>
Ms Carol McCann	<i>Northern Ireland</i>
Ms Mary Lou Winchbourne	

1291. **The Chairperson:** I welcome representatives of the Governing Bodies Association (GBA) to the Committee for this evidence session in relation to the Education Bill. Members will have the Clerk's cover note together with a submission from the GBA. You are very welcome. Thank you for taking the time to come and see us this afternoon. Mary Lou, if you want to lead, members will be able to ask questions.
1292. **Ms Mary Lou Winchbourne (Governing Bodies Association Northern Ireland):** Thank you. Good afternoon to you and the members of the Education Committee. On behalf of the Governing Bodies Association, I want to record our appreciation for the opportunity to meet you and engage on a subject that I think we share a common passion about — education. Some of faces at this end of the table may be familiar to you, but, for the sake of formality, I will effect some introductions and immediately dispel the notion that I am a "Wishbone" or "Wishbourne". My name is Mary Lou Winchbourne. I am the vice chair of the Governing Bodies Association, and I am an active governor at a school that is, hopefully, close to Mervyn's heart, on his doorstep in Ballymoney — Dalriada — and I have been there for several years.

I am also the parent of three young children who are enjoying post-primary education. The professional experience that I bring to the table reflects 25 years in three corporate environments operating at national, regional and global levels: for the past 15 years, in the largest snack food company in the world with 300,000 employees in 167 countries. Therefore, I have all sorts of experience of operational models and organisational designs, centralised and decentralised, layered and de-layered, functionalised and generalised. I am happy to share perspective predicated on that professional basis.

1293. To my left is Carol McCann. Carol's professional bag, if you like, is education. Carol has been in education for many years, most recently as head teacher of St Dominic's — a large school, of course, you will be familiar with in west Belfast on the Falls Road. It is a single-sex all-girls' school. Carol is also a member of the Governing Bodies Association.
1294. To my far right, then, Stephen Gowdy and Brett Lockhart. They are members of the legal profession. I hope that you do not need to see them in any professional capacity —
1295. **The Chairperson:** We are very cautious, as everything here is recorded by Hansard. *[Laughter.]* I just give that for advice.
1296. **Ms Winchbourne:** Stephen is an active governor on the board of the Royal Belfast Academical Institution governing body and an executive member of the GBA.
1297. Finally, Brett Lockhart, whose interest, as I said, is in the law, is a past chair of Methodist College governing body and is currently serving as a governor. He is also the parent of three young children in post-primary education.

1298. So, you know us on an individual basis; we, of course, make up the delegation from the GBA. Again, for the record, familiar and all as you may be with that acronym, the Governing Bodies Association is a voluntary organisation, representing 51 schools across Northern Ireland and, therefore, the interests in over a third of secondary-school pupils in that population. Those statistics are from the Department of Education's last census.
1299. I would like to emphasise at the outset our enthusiasm for this opportunity to draw time and attention to education. The Education Bill has drawn an awful lot of attention and interest. It affords an opportunity for us to look at the things that work well in our system and the things that perhaps we could improve. The spirit of continuous improvement is very welcome. Any opportunity for review and critical appraisal from which we can learn is beneficial.
1300. We also welcome the prospect of change where it is clearly linked to improved outcomes in the educational setting. Development is the essence of what we do in our schools — self-improvement, personal growth. We have considered carefully the detail of the Education Bill and have a number of aspects that we would urge your consideration on that reflect concerns that we would like to share with you.
1301. We made a written submission. We would now like to illuminate in a more personal way some of our key concerns. Stephen and Brett will articulate and elucidate some of those reservations, but it is very much in the spirit of celebrating and sustaining that which works well and avoiding the risk of throwing a baby out with the bath water through the adoption of a Bill that, perhaps, represents the greatest change to education since the 1947 Act.
1302. **Mr Stephen Gowdy (Governing Bodies Association Northern Ireland):** Thank you very much for the opportunity to be here. You have had the benefit of the written submission that the GBA put to you. There are a couple of matters that I wish to talk to in relation to it.
1303. Most of us sitting here would acknowledge that the voluntary system has served our sector very well. It delivers a very good and sound education for the pupils in the care of the schools that are governed by boards of governors under the voluntary system that we have here. With that in mind, one of the areas that has seen most contention as ESA has commenced its progress over the years has been employment. It seems to us that it is absolutely fundamental to the voluntary system that boards of governors should be, be seen to be and, in law, be the employers of staff. There is nothing more critical to the proper running of the school than a close relationship between the board, the principal and the staff. That is fostered in a much better way if they, rather than an outside body, are the parties to the relationship.
1304. Accordingly, therefore, much concern was expressed when it was suggested that ESA would be the employing authority. So much so, that that matter was dealt with in the heads of agreement, which was reached and promulgated by the Office of the First Minister and deputy First Minister. The Bill that we have before us follows from that agreement. Therefore, it is a reference point for all the Bill's provisions. It is, therefore, important to see that the Bill reflects properly what is in that agreement. I would venture to say that the Bill was — or, if not, ought to have been — drafted with those provisions in mind.
1305. I want to speak first to the provision in clause 3, which makes the bald, if you like, statement:
- "All teachers and other persons who are appointed to work under a contract of employment on the staff of a grant-aided school shall be employed by ESA",*
- and to test that against the litmus paper of the heads of agreement. Clause 3(1) repeats what paragraph 5 of the heads of agreement provided, namely:

“ESA will also be the single employing authority of all staff in all grant aided schools.”

1306. However, as far as the heads of agreement is concerned, that is not the whole story, because that has to be read in the context of paragraph 10 of the heads of agreement. It starts with the word, “Notwithstanding” — an important word because it then says that, irrespective of the wording of paragraph 5, some other arrangement is to be enforced. With regard to clause 3, we find that in paragraph 10(c). Therefore, notwithstanding that ESA is to be the single employing authority:

“Where it is already the case, Boards of Governors will continue to employ and dismiss members of staff.”

1307. The word “continue” carries with it the idea that nothing changes; that the position before the enactment of the Bill will be the position after its enactment. The position before the Bill’s enactment will always have been that the boards of governors are the de jure employers of staff. Therefore, if we are to be true to the heads of agreement, that state of affairs has to continue after the Bill is enacted so that boards of governors have to continue to be the de jure employers of staff. Otherwise that will run contrary to the heads of agreement.
1308. It has been suggested that the arrangement envisaged by the Bill is that the power of employing staff will be delegated by ESA to the boards of governors. However, that is not what the heads of agreement say. The heads of agreement say that the boards of governors will continue to employ and dismiss staff; that the situation will be as it was before after the Bill is enacted. Before the Bill, there was no question of the authority to employ staff being delegated. Furthermore, in technical terms, even to bring that into effect, you would have to remove the powers of the boards of governors to employ staff before ESA can delegate them afresh. That, again, runs contrary to the concept of there being continuity in the powers of boards of governors to employ and dismiss staff.

1309. The word “continue” also shows that the state of affairs is to be as it was so that any new intervention, such as ESA, has to be brought in in such a way that it does not interrupt the continuation of the state of affairs that previously existed. It is for that reason, therefore, to give credence to the Bill that we have proposed an amendment to clause 3, which, in our view, explains what in actual fact is happening here.

1310. If the power of a board of governors as the de jure employer of staff continues as envisaged by the heads of agreement but ESA is to be the employing authority, ESA must exercise that power as an agent of the board of governors. Under the heads of agreement, the de jure right to employ remains and continues with the board of governors. That can be effected if ESA is carrying on its functions on behalf of the board of governors as its agent.

1311. I think that when the Bill was introduced, the Minister made reference to the fact that ESA was not meant to take away the powers of the boards of governors and that it was to be a sort of filing cabinet for the exercise by boards of governors of those powers. Therefore, to effect and reflect that and to put matters beyond doubt, especially when there are comments that the authority is a delegated authority, it is necessary to spell out the provisions that the powers of the boards of governors continue as paragraph 10(c) of the heads of agreement sets out and that that means that ESA carries out its functions as an agent of the board of governors.

1312. Many of the other amendments that we proposed flow from that. I do not propose to go into them all because they are self-explanatory and are meant to reflect what we say was agreed in the heads of agreement.

1313. Another matter is the unfettered nature of many of the powers of ESA, with particular reference to clause 20(1), which provides:

“ESA may enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school.”

1314. That is not in any way limited. ESA, according to that, can make any decision as to what it wants to do with the buildings of a voluntary grammar school and can enter into a contract for that. I find that high-handed, to say the least. ESA is proposing to enter into contracts for buildings that it does not own and in a number of cases, my school among them, where those were provided without any funding from the state. Therefore, it seems incongruous that there should be such an unfettered power for ESA to enter into such a contract.
1315. There may be situations where it is desirable for ESA to do that. Therefore, the amendment proposes that in the case of a voluntary school, ESA should do that only with the consent of the board of governors of that school. In many ways, that is stating the obvious. ESA can enter into as many contracts as it wants to provide or alter the premises of a grant-aided school. As it has no power to enter the premises of those schools, it is difficult to see how its contractors could carry out those contracts in the face of opposition from the boards of governors. It is self-evident that where ESA enters into such contracts, it should do so only where it has the consent of the owners of the school property.
1316. As I said, that is an example of an unfettered power. There are others, particularly those relating to the ancillary functions of ESA. It would look better if those were expressed in terms that those should be effected where it is reasonably necessary so to do.
1317. Those are the two main issues that I wanted to draw to your attention.
1318. **Mr Brett Lockhart (Governing Bodies Association Northern Ireland):** I have written often to the Committee, but I welcome the opportunity to express some of my concerns in person today.
1319. I will begin with an apology. In my paper, I said that ESA would have 50,000 employees, but when I checked the 2008 business plan on the Department's website, I discovered that it will employ more than 60,000. Therefore, here we have an organisation in Northern Ireland that will be more than twice the size of the Civil Service. Despite this great aspiration of maximised delegated autonomy, we are entitled to ask a few questions.
1320. When the reform of public administration became an issue for all the political parties, those of us in the education sphere would have liked to have seen more money brought to the front line. That is an aspiration that all politicians will say they subscribe to. We have in Northern Ireland the most disappointing figures, to put it euphemistically, for the amount of money from the delegated budget that gets to schools and colleges; it amounts to between 58% and 62%. The equivalent figure in England and Wales, where the direction of travel is so much different, is 80% plus.
1321. One of the things that we would have liked to have seen in any reform of public administration is the ending of duplication. That would mean that everyone would be ad idem on the idea of amalgamating all the boards and taking away duplication. That was common to all perspectives in this debate.
1322. I fear that, in the midst of that, we have moved to a totally different concept. In doing so, the Bill has also sought almost to legislate out a sector that represents, from the voluntary perspective, 33% of secondary-age children. Yet we are told that we will be in the same boat as everyone else when it comes to employment, subject, of course, to the heads of agreement. Stephen has explained how that has been dealt with, and we will defend it very strongly.
1323. This is the biggest change to education governance since the Education Act (Northern Ireland) 1947. Will the proposed changes improve educational outcomes and the percentage of the delegated budget that gets to the front line? I am struggling to understand how educational outcomes will be improved.

Perhaps others can show me, but I cannot particularly see it. I do not see it when you are going to suck into the system a huge number of teachers and a budget that goes from the Department through to ESA and then to the voluntary schools when previously it went straight from the Department to the voluntary schools.

1324. Thousands of staff are now going to be employed by ESA even if it is only on an agency basis. How much money is that going to cost? Has anyone costed that? How much additional moneys are being expended in doing something that is not going to improve educational outcomes or increase the percentage of the budget that gets to schools? It is a truism that good schools succeed with good principals, good teachers and good governance and leadership. The Organisation for Economic Co-operation and Development (OECD) report, which I was sent a copy of the other night, looks at school autonomy and accountability, and in countries where schools have greater autonomy over what is taught and how students are assessed, students tend to perform better. The report gives examples of countries where schools have the greatest delegation. Frankly, it seems that where you have the greater level of accountable autonomy — all voluntary schools have to be accountable — the better the outcome. What I want to know is this: why are we spending so much money and what is the benefit in bringing all these teachers under the one roof? What is going to happen to improve the educational outcome, or is it just going to be a huge cost? Is there another concern here?

1325. The more I have read the Bill and the more I have been involved in the debate over many years, I am afraid that there is an ideological bent coming in, which is that we really do not like the fact that our schools are not all centralised; we would rather have a command-and-control approach; and, frankly, they have got away with too much for too long and they should be in the tent as well. It has nothing to do with education outcomes

or with getting money to schools. I see that Chris is here today, and I am going to come back to an old chestnut: if that is the case, and I think that you need to get information as to whether it is the case, in empirical terms, even without the amendment that we put forward as an attempt to deal with the Bill as it is and to say that we are where we are, why not have the opt out? Will that not save money? Will that not continue to have good outcomes? If it gets to the stage, which we all know will happen, where, just before the Bill passes, there will be wangling and dealing and difficult decisions, and we know that various parties will take strong positions — I suspect that our interpretation and the Department's interpretation of the heads of agreement may be slightly different, but I suspect that many members here will share our view about what should happen — but when it gets to the crunch, the opt out is there again. What damage will be done by having an opt out? There are voluntary schools that have — in this instance, for over 150 years — managed their own budgets, been accountable to the Department and, essentially, done a better job than the Department. We have been very efficient with that, and we now find ourselves the focus of the fact that we are not in the sectoral bodies, we are not on the ESA board, we have no ex-officio representation, we have sectors that represent 2%, 7% or 8% of the secondary school-age population being given all sorts of due recognition, but our sector is told: sorry, you are now going to be brought into this new arrangement and we are going to do away with something. If the OECD is right, and if what is happening in England and Wales is right, more autonomy introduces better results, and we should be introducing it in a broader, not a narrower, way.

1326. From my perspective — Stephen and I had some input into the amendments and, obviously, the amendment to clause 3 is the critical amendment — I still think that it may come down to a difficult decision for many of the parties here. We would say this: do not rule out the

- opt out, because it would be simpler, it would preserve the legislative integrity of the Bill and yet you would still have an alternative model. I know that many people have set their face against that. Be that as it may, you may still find that a political decision needs to be made, and I would simply like to raise it as a continued option.
1327. I appreciate that we want to have time for questions. However, my other main point, which I have already touched on, is that we have sectoral bodies for every sector apart from the voluntary sector. In my discussions with members of the Committee, I think that there is an encouraging recognition that we are entitled to representation, and we are entitled to put forward our views. We have a very successful story to tell. We are interested and reflect that interest in the whole of education for all secondary schools in Northern Ireland. This is not a question of pulling up the drawbridge and saying that we just want to opt out to be left alone to continue on our merry way as we have done before. The GBA, in particular, has never shied away from recognising that the real debate that should have gone on many years ago may still have to take place. We recognise that there are anomalies in the system. We want to be a part of the ongoing debate about education, and the fact that we have no sectoral body and no representation, unfortunately, gives rise to the suspicion or the inference that there is a very determined intention among those who have drafted the Bill to exclude us and to write us out of history, so to speak. We feel that we are being told, "Thank you very much, you are now redundant."
1328. So, we think that the case for a sectoral body and ESA representation is fairly unanswerable, given the size of the constituency that we represent, and we think that it is a matter of equity and justice that we are allowed that kind of voice. As you will know from the latest 'Belfast Telegraph' polls, we represent the majority of parents in Northern Ireland. The majority of parents in both communities support academic schooling. In every poll that has been taken, and to judge by the numbers who take the tests, they support the kinds of schools that we represent. That is important to keep in the context of the debate.
1329. To summarise very briefly, we have put this amendment forward, and I still think that you might find that that is a matter of some contention, because it will disrupt the delegated model that Chris has talked about. There is an option that will preserve the legislative integrity of the Bill. Over decades and centuries, we have justified the confidence of the Department of Education that we can run our schools well and will continue to do so. If there is not going to be an opt-out and we get the amendment through, we would also like to be a part of the ongoing debate. We have something to say about it, and, frankly, it is inequitable that we are excluded from it. I am sorry if I have gone on for too long, but those are the two main points. You have the other amendments, and I am happy to deal with them in any way.
1330. **Ms Carol McCann (Governing Bodies Association Northern Ireland):** I come here as a humble principal of a voluntary school. When it comes to the legislation and all the rest, I am not as au fait as legislators in understanding the full impact that way. I am the principal of a voluntary school of 1,000 girls. When I became principal in 2007, I could see the big advantage of the school being voluntary. I had worked in a voluntary school for 27 years before that. As a teacher, you probably have very little knowledge of how the school works until you become principal. I was appointed principal in 2007, and, at that time, Mr Gavin Boyd, who was designate director of ESA, came along to a meeting of Catholic heads. At that meeting, he said that the voluntary grammar model is the one that most people aspire to. The term seems to have changed to "maximised delegated autonomy". I remember that he spoke of "maximised supported autonomy". As kind of a rookie to the job, I had to find out what that meant.

1331. There is huge deprivation among the children who come to the school of which I am principal. We try to get best value for money, and any extra money that we can get makes a big difference to the individual lives of children in our school. I am just becoming au fait with this, and when I hear things such as a maximum of 62% of the funding comes into schools, I know that it will be the aim of all politicians to make that much higher. In 2008, we were lucky enough to be designated as a specialist school. That provided for a lot of extra money. We are also lucky enough to be an extended school, and I take this opportunity to ask you to find a way to keep that going so that we get extra finance. It is very important finance that makes a big difference. For some years, we got a bit more of the budget share, but all of that has had an impact and allowed us to do exciting things and things that make a big difference to the lives of children. That is where I come from.
1332. We can make decisions very quickly when we wish to employ someone. I have spoken to our local politicians about the decisions that I can make as the principal of a voluntary school. I would fight for the right of most schools to operate in the same way as I do. If I decide that I want to save money in my office and not go through the board, I can do that. The efficiencies and the flexibility in our model allows me, as principal, and our board of governors to serve the needs of the children in the school.
1333. We realise that the world is always changing, and, as Brett said, we want to be part of the change. It is not that we are stuck to a particular model. This part of the model is a very good part, and we firmly believe that it is very important to have those employment functions and the ability to have autonomy over our finances.
1334. If that is moved away from schools, it will result in long decision-making processes. I look sometimes at the board adverts or the Council for Catholic Maintained Schools (CCMS) adverts and ask myself how those work and how long they have to wait. I have spoken to some of the board schools who tell me that they have paid into that but end up duplicating because they have to get in early if they want to advertise for new teachers.
1335. Those are the simple things that matter to me as a principal. I have some concerns that they may be lost. This is a one-chance opportunity for Northern Ireland to get a Bill that will enhance children's lives. That is what we want, and I am sure that it is what everyone around this table wants.
1336. That is my approach, which is a simple one from a working practitioner.
1337. **The Chairperson:** Thank you very much for your presentation and for the paper that you submitted. Obviously, a raft of things come up as a result of any process such as this, where you have a Bill of this size. The challenge for this Committee is to condense the key issues for all the various organisations that make representations to us, so that we can have a very clear picture of the key priorities for those organisations.
1338. First, it would be right and proper to say that we appreciate the work of the GBA and the contribution that it has made, along with the schools that it represents, to education down the years. It is beyond question that it has made an invaluable contribution, to the benefit of society and the lives of young people, as a result of the education that is provided by the schools that it represents. To you, your principals and teachers, and everyone else involved, I offer our appreciation and thanks.
1339. Whether we call it "the voluntary principle", "maximised supported autonomy" or "maximised delegated autonomy" or whatever phrase we want to use, do you believe that the model that Carol outlined from a practitioner's point of view has worked well for your schools and that it should be available to other schools, for example, in the controlled sector, which believe that they have been impeded, hindered or slowed down by the processes? Those

- schools look at their colleagues in the voluntary sector and see that they can, if they so wish, decide in three days to paint a room, whereas it would take the board six months and 24 consultants to decide whether they should have the room painted in the first place. The people from the boards will probably not regard that as a very fair analogy. However, is that where you see this potentially going? It is not just about “ourselves alone”, but it is about the fact that there is a very good model and that we would like to see others being able to access it, and that would be of benefit of education in general.
1340. **Mr Lockhart:** We have already had a range of discussions with representatives of the controlled sector from selective and non-selective schools. I was at a conference with Andy McMorran, former principal of Ashfield Boys’ High School, and his perspective was very refreshing. He clearly saw that the less — I do not mean this pejoratively — interference from the board, the easier his job was. There was a very clear understanding that schools want maximised autonomy because that allows them the greatest flexibility.
1341. I fear that what we are creating here potentially does away with the voluntary school model. The voluntary school model is sucked into a different kind of model, which is a kind of one-size-fits-all approach, which is why all people are employed, and some of the savings, for instance, that can be achieved by the budget going directly to the school and the school having to be accountable directly to the Department, properly audited, etc, will get lost. That is why I continue to advocate the opt-out, because you are preserving a model that can still be there as part of the debate.
1342. I very much welcome the interest of the whole sector, the controlled schools, selective and non-selective, that see this as a good thing. We know, and everyone agrees, that good schools happen through good leadership, good governance and good teachers. The more you can get savings administratively and give them the resources that they need, the more that will take place. We know just from experience that we can manage a budget well. We have done it for decades and have been accountable for it.
1343. We just cannot see why we are spending more and more money on administration. That is what I fear sometimes about the Bill. Why are we employing 60,000 people? It just does not make any sense. I hope that that reassures you, Chair.
1344. **Mr Lunn:** May I interject? How many people are employed in the education system at the moment?
1345. **Mr Lockhart:** You have many thousands employed in the controlled sector, Trevor, but the reality is that you are about to introduce thousands more. That is what I am saying. The point I am making is, is that going to do —
1346. **Mr Lunn:** Just on the actual figure: if you tot up the number of people employed by the boards, the schools and all the ancillary staff, what figure do you come to at the moment? You are using that figure of 60,000 as if it was a vast increase. I do not know whether it is or not.
1347. **Mr Lockhart:** It is at least a 33% increase.
1348. **Mr Lunn:** How is it?
1349. **Mr Lockhart:** We employ huge numbers of staff. We educate 33% of the secondary school sector.
1350. **Mr Lunn:** If you include your 33% with all the ones you just mentioned, is it not something similar to that figure of 60,000?
1351. **Mr Lockhart:** No, because the teachers and ancillary staff that we employ are employed by us, and we are responsible for them. We will increase by thousands the number who are employed. My question is: how much will that cost? All I am asking, Trevor, is do you not think that the Committee should find out that additional cost?
1352. **Mr Lunn:** I am sorry, but they are already employed in the education system.

1353. **The Chairperson:** I think the point — Brett referred to it earlier, and it is something that we as a Committee will ascertain and get from the Department — is that we have not seen for a long time an updated version of the business case. Obviously, the business case should inform us as to who is and is not employed. We saw figures from the Department telling us that it reduced the number in ESA by a considerable number even though the organisation does not exist. We should hold out hope that at least something can be done on that issue. We need to face the fact that we need to base it on reality. The issue is the business case, and if the Committee is minded, we will proceed to get that information.
1354. The heads of agreement with regard to clause 10 was a political decision. I hear others talking about what should or should not be done. Those who made the political decision to include in the heads of agreement the worth of the value of ESA reflecting a certain position need to be understood. How important do you see the heads of agreement — this is the phrase that I have used repeatedly, not as Chair of the Committee but as my party's spokesperson on the issue — being accurately reflected in the legislation? Obviously, Stephen has expanded on it, but how important is it from your perspective?
1355. **Mr Gowdy:** The heads of agreement plays a major role in the Bill, and it is referred to a number of times. Unfortunately, it is not defined in the Bill as it stands. Therefore, we do not really know what we are talking about. It is essential, from every point of view, that the heads of agreement be defined in the Bill and, what is more, be replicated in a schedule to the Bill so that we have no doubt that these are the words that we look to and that this is the touchstone and nobody can debate that. The heads of agreement are, in my view, central to the Bill because the wording of the Bill is borne out of the heads of agreement in many ways. Therefore, the heads of agreement must be properly defined and, ideally, set out in a schedule. That would not be difficult to do. We have proposed an amendment for that.
1356. **The Chairperson:** Just to expand slightly on that, with regard to the whole idea or concept of ESA as an agent of a board of governors, are we aware of any examples where we can see that working in practice and working as a viable proposition?
1357. **Mr Lockhart:** We are trying to get as close to the status quo as we can. I have already said, and it is in our paper, that there is an apparent contradiction between clauses 5 and 10(c) and this is our effort to try to square that circle. To answer your question as to whether there are models for this, probably not, because this is a legislative architecture that is unnecessarily complex, although it is there, and we are hanging on to it very strongly because it is the one thing that may help us to retain the modus operandi that we have had to date. That is why I keep saying that you have to look also at the benefit. If we are going to retain the status quo as much as possible, what is the benefit of having us in the system at all?
1358. **Mr Kinahan:** It is very good to see you here. We will certainly support you having your own sectoral body. The heads of agreement point has been clarified. You talked about trying to get more funding down to schools. I have searched the Bill high and low to try to find ways in which you could amend it to get that as part of it, but I cannot find any mechanism to do that. Will you comment on that, because it makes it very difficult?
1359. With regard to the membership of the ESA board, you said that you had lots of discussions with the others. If you add another four members, you change the balance of the board in the way that it could possibly be set up at the moment. Have you discussed how that balance would work with transferors or CCMS and others, because it does throw the balance?

1360. In my last query I will play devil's advocate. A large section of the community — I do not need to name them here — is against the voluntary grammar or against grammar schools because you take, in theory — I do not believe that it is right — extra skills and resources that could go to other schools. Do you see other ways in which you could work in the future to start sharing more and helping the other schools? We have explored that slightly in the funding issue and letting other schools adopt your model, but that is the big criticism that is thrown out at you, and it is not always fair.

1361. **Mr Lockhart:** I will initially deal with your question. I think that what I most regret in the past 10 years is that we have not been able to contribute to a broader debate about resources and education in Northern Ireland. I mentioned the word "recently". We have a Minister with whom I personally get on well and have had some very good interactions, but I do think that our Minister is ideologically hidebound, because he has a one-size-fits-all approach. The problem is that many of the steps that we could take or discussions that we could have will not happen, because we have been told that the Department has only one way of going about this.

1362. Let me give you an example, and this is a very live issue: schools are statutorily required to fill their places with children who apply even if they do not have the academic standard that the school requires. The school is still statutorily required to take those children. Mark Langhammer, an old school friend of mine and head of one of the unions, was talking to me recently and said that you could make a massive difference very quickly by saying that academic schools have to be academic schools. You have an issue there about resources and how resources follow the pupil etc. That is a much broader debate. I am not trying to preclude how you would deal with that, but the Minister cannot touch it, because to touch it would recognise and acknowledge the fact that there already good grammar schools. However,

there is one way that you could have had a broader debate. That debate cannot and will not happen, frankly. I regret that. I regret, for instance, that the sort of broader thinking that many who are passionate about education, not just in our sector but outside it as well, want to discuss for the benefit of all children in Northern Ireland, will not happen because we are so entrenched now in these sorts of ideological frameworks that we cannot talk to each other.

1363. Obviously, it makes sense to see whether there is duplication of some of the bodies that are represented on the ESA board and to ensure that there is proportionality and all the other good legal principles. At the moment, however, it is very difficult to do that, Danny.

1364. **Mr Gowdy:** You asked whether there was a body opposed to voluntary grammar schools because it sees a drain of resources into those schools. That is a slightly different issue from the voluntary principle. The voluntary principle is a method of governance of schools that relies on volunteer governors to run the schools. Is that a good model? Mervyn asked whether we see that as going beyond our present voluntary schools. My answer to that is unequivocally yes. There cannot be any argument that a school is better run by people who are committed volunteers to that school, whether it is what you would call at present a voluntary school or a controlled school.

1365. I dare to say that an awful lot of the controlled schools that have been inexistence for a time have a loyal following. Lots of volunteers would go in and do the same tasks, as we who are on the boards of the voluntary schools do willingly and with a sense of pride. There is no reason at all why that cannot be transmitted to other schools, whether they are grammar or non-grammar schools. The whole idea is to let the power trickle down to those who can apply it best.

1366. **The Chairperson:** I apologise to other members but you want to get away, Trevor.

1367. **Mr Lunn:** Thanks, Chairman, for letting me in early because I have to get away. I would not want to cross swords with anybody as learned as you two, especially in terms of detail. I might query your arithmetic, Brett, to be honest. All those people are already employed in the education system. The money is coming from the Department, so how you can make the comparison that you made earlier, I do not know, but we will leave that one.
1368. **Mr Lockhart:** I am happy to answer that, Trevor. I wanted an opportunity to come back on that. What I am talking about is the administrative cost of sending money from A, through B, to C as opposed to directly from A to C. There is an administrative cost to that. Secondly, there is an administrative cost when you are the employer of staff and you have arrogated to yourself all sorts of duties, such as turning up at board meetings and giving advice. There is just going to be an administrative cost for that.
1369. **Mr Lunn:** OK. I am with you on the question of the sectoral body. I would not like to be defending the argument that there should not be one. When you are educating that many children, it is self-evident. We will see where that one goes.
1370. The employment question is the big one for you. You are giving us one version, and the Department is giving us another. I can only think about this in broad strokes. Your schools will be able to set up their own employment schemes. ESA cannot reject those schemes unless they contravene statute. ESA cannot interfere in the decisions that the governors or trustees make under those employment schemes unless they contravene the scheme.
1371. In simple terms, that does not sound that big a change from the existing situation. I think you said, Brett, that you wanted things to be as close to the status quo as possible.
1372. **Mr Lockhart:** Yes.
1373. **Mr Lunn:** I can understand that. You have been around for 150 years, and that is understandable, but change is coming, and, as someone else said, the world does not stand still. I have had long discussions with the Department and with two grammar schools in Lisburn about the employment side of things. I cannot see what day-to-day difference this is going to make.
1374. **Mr Gowdy:** Then why make it? There is no reason to make it.
1375. **Mr Lunn:** That is the argument that was put, but if you assume that change is coming and that all the schools are going to be under an umbrella to some extent, it does not seem like such a —
1376. **Mr Gowdy:** But you do not have to make that change. All schools do not have to be under the same umbrella.
1377. **Mr Lunn:** You do not have to make ESA.
1378. **Mr Gowdy:** Exactly. That is what we have said all along. You do not have to make ESA. The savings from the review of public administration (RPA) could be fulfilled in another way, not by creating ESA. There is absolutely no need to create ESA in the way in which this Bill envisages it. Our amendment is proposed because it needs to reflect the heads of agreement so that the status quo is preserved.
1379. The status quo should be as it was, and that which is being introduced should yield to the status quo. The word in the heads of agreement is “notwithstanding”. Our point is that we will have the heads of agreement informing us, and that is why we are proposing the amendment. We would rather ESA was not expressly the employer of all staff. We see no good reason at all why it should be, and there has been no credible explanation given. It seems to me to be a total waste of energy and resources to introduce something that is patently unnecessary.
1380. **Mr Lunn:** Well, like everyone else here, I have a lot of reading and examination to do, and that is what we are going to do over the next few months. You have made a significant contribution. Is it fair to say that you want ESA to be the agent

of the boards of governors, whereas the Department wants the boards of governors to be ESA's agents? It is pretty simple, is it not?

1381. **Mr Lockhart:** The Department will have difficulty with that interpretation over the heads of agreement. That is the problem, and you will face a philosophical clash there. The reality is that there is clearly a difference in the heads of agreement. It may not be a legal document, Trevor, but it is there. It can be interpreted, but there is clearly a difference between a school that previously employed and dismissed staff and other schools. It would not have been introduced otherwise.
1382. **Mr Lunn:** If the heads of agreement means as much as a whole succession of previous agreements between the First Minister and the deputy First Minister, I would not get too excited about it.
1383. **Mr Gowdy:** The other issue is that, where the school is the employer and is said to be the employer, even though the practical consequence may not, to you, be as great if ESA takes over, there is, nevertheless, a perception issue. Where a school employs its own staff — this would apply to other schools — there is a community of interest, which is built up between the staff, the principal and the pupils, and which, I think, is at risk if a third-party, general, outside person is expressed to be the employer of that party. That community of interest is vital, because it is through that that the pastoral care in the schools is given. It does form a real community, and that has significant advantages in dealing with those issues that, unfortunately, are all too frequent nowadays, where a lot of pastoral care and support has to be given to pupils. If the school is the employer of the staff, it makes that a much more cohesive unit.
1384. **Mr Sheehan:** Thank you all for coming along. I heard a lot of energy and passion today, but I am not so sure that I heard too many cogent arguments. I note some of the language in the

documents that we received. In your executive summary, for example, it says:

"In particular the ability of voluntary schools to employ their own staff has been removed. This has not been because there have been problems or a lack of accountability; it is simply due to an ideological reasons."

1385. There is a misprint there. I assume that it should be "reason".
1386. You also said, Brett, that this has nothing to do with educational outcomes. Could it not just be the case that the Minister wants to improve the education system and that the voluntary grammar sector, as part of the overall education system, has to play its part in that?
1387. **Mr Lockhart:** There are two points, Pat. I do believe that the Minister does want to improve educational outcomes. I think that is his stated aim, and I have spoken to him about it. However, my quibble with him is that he sees only one model to do that, and that model involves doing as much as he can to do away with the sector that I represent because he sees that sector as elitist and having brought in all the good children, leaving the underachieving tail, so to speak — again, I do not mean that pejoratively. Is that a problem? Yes, it is a massive problem, and that is why we said we want to play our part in contributing.
1388. Let me give you an example: Methodist and Inst recently had an initiative for which they got an award, and it involved going into primary schools in and about Sandy Row and the Lisburn Road and trying to create contact with children who traditionally would not have applied to our schools. Let me give you another example: Methodist College has introduced in the tiebreak the fact that, if you are on free school meals, you will be the first to get in, above the preparatory schools. So, we as a board of governors, because of our Methodist background and ethos, said that we want to give children, particularly those from a disadvantaged background, the greatest possible chance of coming to our school. We do not want to be bastions of elitism, and you will find

- that grammar schools have been the greatest engines of social mobility compared with any other institutions. If you are saying that we are not interested in outcomes for others, we are. We would really like to get to the debate.
1389. Pat, I would like to be involved in the debate. I would like to contribute to it. I just think that the solution that is being imposed upon us constrains us and does not allow for different models. It may well be that, in certain areas, St Paul's High School, Bessbrook, is a great solution to local issues. I am not ruling that out at all, but there also has to be room for examples of where there is a more intense academic focus, so that we can have the kids doing classics and the hard sciences and so that there is a whole spread of provision.
1390. I do not fear the debate at all. I have spoken to the Minister regularly, and I just think that the ideological framework is too narrow. We do not need it to be as narrow as that and, if you broadened it a bit, we might have a better discussion.
1391. **Mr Sheehan:** The difficulty in saying that the Minister is prepared to look at only one model is that you said yourself that there is nothing wrong with the grammar sector and there should not be any change — the status quo should be retained. The term “ideological” in this debate is pejorative and loaded. The fact is that international research and best practice shows that non-selection models provide a good educational model for children of all abilities and the issue of selection or rejection is in itself problematic. If we look at the results of the research that was published yesterday, we can see that primary school teachers are doing an excellent job. The problem seems to arise when children move into post-primary schools.
1392. **Mr Lockhart:** I do not want to have a private school education system in Northern Ireland, and thank God that we do not have one. We do not have a system in which the amount of money you have means that you can get to an excellent school. England and Wales are great examples of where the kind of model you are talking about has not worked, and we now see the drive to go back to what they had in the 1960s. They wrecked their school system. They have a huge private, independent system that is based on the ability of people to pay, which I do not subscribe to. It is based on trying to deal with the problems that have emerged through one-size-fits-all approaches. There may be examples in Finland and elsewhere where other models have worked, but certainly not the closest one to us. And the Republic of Ireland; what is happening down there? There is a private school system that sucks up a huge percentage of children who can afford to go to those schools. We do not have that in Northern Ireland. That is worth preserving, and the only way to preserve it is not to impose something that only allows for one particular model. I passionately believe that.
1393. **Mr Gowdy:** I am surprised that you introduced the question of selection. ESA is not about selection. We have not come to the Committee to argue for or against selection. We are coming to argue for the preservation of the voluntary principle, which is at risk through the legislation. That voluntary principle can apply to a non-selective school as well as to a selective school, so I am afraid that your point about selection and our opposition to what is being proposed by ESA just does not follow. The two are completely different things.
1394. **Ms C McCann:** I think it is important that we do not get involved in the selection debate in relation to the voluntary principle. I have had a lot of exchanges with parents and teachers in other schools within the area who envy the fact that I can make very quick decisions. I remember speaking to a primary school principal who told me that they had to wait ages for a light bulb to be changed. We do not want to get to some kind of situation where it becomes a bigger machinery for all schools. We talk about 60,000 people being employed; you are going to increase that number, so you will

increase the level of bureaucracy. Things can be very slow. One of the big plusses of our school is that we can make decisions very quickly, we can be flexible in how we use our funding to find extra money for numeracy and literacy, and we can target it at the children who really need that. I would certainly go back to the 2007 discussion, when it was said that that was a model that most schools should subscribe to because it is a model that obviously works. At the end of the year, we have to balance the books. We do not have a choice but to balance the books.

1395. **Mr Sheehan:** Carol, can I just stop you there and ask you a question? Do you think that the Minister wants a model that brings about greater bureaucracy?
1396. **Ms C McCann:** I would think that he does not, but we are just worried; there needs to be clarity within the Bill so that it does not. The whole idea of RPA and the whole idea, I would think, behind the Minister's decision is to put greater money into schools. I know at first hand — my previous school was a specialist school as well — of the difference you can make to children when you get that extra funding. I am an advocate for extra funding going into nursery provision or whatever, particularly in areas where you need more money for that. Somehow or other, there are some concerns that the Bill might lead to greater bureaucracy as opposed to less bureaucracy. The less bureaucracy we have, the quicker things can get done and the better you can help the children in your school on the ground. That is a very simplistic point perhaps.
1397. **Mr Sheehan:** I think that everyone wants that.
1398. **Ms C McCann:** Again, we would like you politicians to make sure that that happens and to safeguard that, because it is a unique opportunity to get it right.
1399. **Mr Rogers:** You are very welcome. I have two points. Can you tease out how the opt-out clause will operate in practice for a school that went in under the ESA system and then, two or three years down the road, decided to opt out?
1400. **Mr Lockhart:** I drafted an opt-out clause four years ago. It is there in the system, and it keeps getting dusted down every so often. I envisage that, for a school to opt out — and if you were trying to use that as a model — it would have to fulfil certain statutory criteria. Your long-term enrolment (LTE) may have to be at a certain number, you would have to show that you had the resources and infrastructure to properly audit and manage your budget, and you would perhaps need to be on probation even before the Department would be satisfied. However, I certainly recognise that the way the present systems works, Sean, as you know yourself, is that all voluntary schools have to be absolutely accountable to the Department for the public money that they spend. Therefore, that would have to continue. Economy has to be accountable, and nobody is arguing, “Just give us the money, and we will not tell you what we do with it”. We have to be accountable for every penny of public money that we get. We think that we have done a very good job of it, and we think that we have demonstrated that we can do it and have done it. As I see it, you would have to have a number of statutory criteria that would have to be done in conjunction with the Department, and the Department, in fact, would have to be satisfied that a school could adhere to and meet certain targets in relation to that public money.
1401. **Mr Rogers:** My other point is that you said that you had discussions with the controlled sector. Have there been discussions with the maintained sector and the commission?
1402. **Mr Lockhart:** Many, many discussions, and we will have many more discussions with the maintained sector and the commission. Those discussions are ongoing, and we continue to have an exchange of views and co-operation with them. I think that a lot of people in Northern Ireland would like to see a greater level of autonomy. The critical question to ask to, if you like, proof the Bill is whether it does one of two

- things: does it improve educational outcomes and does it increase the proportion of budget getting to the front line? If it does not, then you need to say that there is a problem and that it should be looked at again. I feel that increasing the administrative costs by bringing in a lot of staff to the body will inevitably mean that there will be greater administrative costs. I just do not think that that can be justified. I take Stephen's point: I have never heard a credible explanation for why that is required. If, in fact, we are trying to get to the position where the status quo is being maintained in respect of voluntary schools, why are we having all sorts of administrative costs to try to have some kind of arrangement that, ultimately, will not meet the criteria?
1403. **Mr Rogers:** If you had the opt-out clause, do you see ESA having a monitoring role in case you need an opt-in clause?
1404. **Mr Lockhart:** Absolutely. If a school is not accountable, the Department already has the famous article 101, which we all refer to with great respect. Of course that has to be the case: schools have to be accountable, they have to meet targets, they must ensure value for public money, and the educational outcomes must be there.
1405. **Ms C McCann:** Whether we like it or not, schools are businesses. I remember that one of the sisters nearly had a heart attack when our school was described as a business. However, I do describe it as a business, because, at the end of the day, nobody is going to come through the door unless we are giving good value for money. That is what attracts people in. If we are accountable for our own success, which includes financial issues, employment and all of those things, we have to keep our eye on the ball — on every ball — every minute of every day. Again, that may be a simplistic view, but that is how I see it.
1406. **Miss M McIlveen:** Sean has covered my questions on opting out. I refer you to the phrase in clause 20(1):
- “alteration of the premises of a grant-aided school.”*
1407. You have proposed an amendment. Can you elaborate on that?
1408. **Mr Gowdy:** As drafted, this gives ESA the right to provide or alter the premises of a grant-aided school. The point is that that has never been the responsibility of ESA. The boards of governors have always been responsible for upkeep and maintenance and decisions in relation to their own buildings, and the upkeep of their own school estate. One cannot see why there should be such an unfettered clause that enables ESA to do that without any reference to the owners of the buildings. ESA is not the owner of the buildings of the voluntary schools. Why should ESA have, for example, the ability to decide that there should be triple glazing in the classroom block, when the board of governors thinks that double glazing is quite enough? Why should ESA then be able to enter into a contract with a glazing contractor to come to the school and insert triple glazing when the school does not want it? That quite defeats me, but that is the import of that clause. That is what that clause would allow. I cannot think why the clause is there. However, if it is to be there, and ESA does not own the buildings, as is the case with voluntary schools, then ESA should only be able to do that with the consent of the owners, who are the boards of governors.
1409. **Miss M McIlveen:** I understand that there is a particular issue around Inst and Campbell College, yet you have broadened it out to include all voluntary schools.
1410. **Mr Gowdy:** I mentioned Inst and Campbell because the situation is particularly acute there, and because they have taken no government money at all in the provision of their buildings. Other schools may have taken 85%, but the principle is still there. Micromanagement like that should be with the boards of governors, and ESA should have no right to come down and impose on schools what it requires or what can be done in those buildings.

1411. **Miss M McIlveen:** Thank you for that clarification. Maybe I should have declared an interest as the product of the voluntary grammar school system. I am an ex-Methody girl, and my brother is an Instonian.
1412. **The Chairperson:** We will not get into that row. I am worried that we might replace Bob the Builder with “Gavin the Builder”. *[Laughter.]* On that light-hearted note, I thank you for coming and for your submission. We have to do a huge amount over the next number of weeks. Sorry, Jo-Anne —
1413. **Mrs Dobson:** Sorry, I have one tiny comment. I do not think that I have ever written as many notes, Brett. That was a very powerful presentation. One thing that really concerns me — I have taken a note of it — is the mention of the very real intention to exclude you and to write you out of history. I feel that it is very important that that does not happen.
1414. **The Chairperson:** Again, thank you for coming. I wish you a happy Christmas. Do not get indigestion over your turkey worrying about ESA. I can assure you that I will not. However, there are concerns, and that in no way dilutes the serious issues that you have raised with us today, as have others, and we look forward to working with you in 2013.

12 December 2012

Members present for all or part of the proceedings:

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

Witnesses:

Mr Jim Clarke	<i>Council for Catholic</i>
Mr Gerry Lundy	<i>Maintained Schools</i>
Father Tim Bartlett	<i>Northern Ireland</i>
Bishop Donal McKeown	<i>Commission for</i>
Sister Eithne Woulfe	<i>Catholic Education</i>

1415. **The Chairperson:** Bishop, I apologise for the delay. I know that you have other commitments, and apologies for the way in which we held you all back. The other issues ran on. You are very welcome. We are delighted that you are here and look forward to a discussion with you. We had discussions with you in the past and we look forward to having a constructive discussion again this morning.
1416. I also ask you to pass on to Bishop McAreavey our sincere thoughts at this time. I understand that he has had another death in his family, and I know that he is on sabbatical. I spoke to him some time ago. On behalf of the Committee, I want to assure him that he and the extended family continue to be in our thoughts and prayers.
1417. **Bishop Donal McKeown (Northern Ireland Commission for Catholic Education):** Thank you very much, Chair. We are unsure about the time schedule. I had been told initially that it was 9.00 am, and I have an arrangement to be at the BBC for 12.30 pm, which I cannot really get around. We are representative of 45% of the pupils in Northern Ireland schools, and I do not know whether half an hour is sufficient for us to really engage.
1418. **The Chairperson:** You will have as much time as you want to take.
1419. **Father Tim Bartlett (Northern Ireland Commission for Catholic Education):** Chair, we do not have that time. We all have other commitments scheduled. We were originally told 9.00 am, and it became 10.30 am at the last minute. We have been here since 10.15 am, and the Governing Bodies Association (GBA) representatives told us that they were scheduled for 11.00 am.
1420. **The Chairperson:** They are scheduled for 12.15 pm.
1421. **Bishop Donal McKeown:** They thought it was 11.00 am.
1422. **The Chairperson:** So what would you prefer to do? Do you want to come back another time?
1423. **Bishop Donal McKeown:** Would that be possible? We would prefer that in the circumstances, and the GBA representatives are waiting downstairs, so you would not be left with a hiatus. Would it be possible for us to reschedule for very shortly after Christmas?
1424. **The Chairperson:** It will create a difficulty in that we are planning to have line-by-line scrutiny of the Bill. That will become a very important piece of our work. The contribution during this discussion is vital to inform us as to how we can progress in the line-by-line scrutiny of the Bill. It will postpone all of that further, which would have implications, because there is an issue as to how quickly we progress the Bill. We have gone for an extension, and I have given an assurance in the House that that extension will not be used until the final date. That is the only difficulty that is created, but if you have time, I am quite happy for you to make the presentation and then reschedule to

- come back. It is up to you. You decide what you want to do.
1425. **Bishop Donal McKeown:** We want to be as co-operative as possible, but we feel that we have a number of points that we would like to chew through with you. The format we had in mind was that I would make general comments on what we are trying to achieve with the Bill for the good of young people in Northern Ireland, and then we would begin to talk about the areas that we have concerns about in order to enable that Bill to best deliver for all of us. In that sense, the two parts hang together. This man has to go to do an interview as well.
1426. **Mr Rogers:** That was the point that I was going to make. From our point of view, it is difficult to have a half-hour presentation now and then try to link it to another day. It is up to you, but my personal preference is to reschedule this.
1427. **Mr Sheehan:** I propose that we reschedule it as well. I do not want to put Bishop McKeown in the invidious position of having to make a decision after you outlining the difficulties. It would be much better if we made the decision.
1428. **Mr Lunn:** Just to complicate it further, I am perfectly happy to see it rescheduled, but there are actually two organisations here. Are you happy enough to do it jointly, or would you prefer to make separate presentations?
1429. **Mr Jim Clarke (Council for Catholic Maintained Schools):** That decision was made for us.
1430. **Sister Eithne Woulfe (Northern Ireland Commission for Catholic Education):** It was not our decision. Initially, we would have proposed that we would have come as the Northern Ireland Commission for Catholic Education and separately as the Council for Catholic Maintained Schools (CCMS).
1431. **Mr Lunn:** Who made the decision?
1432. **Sister Eithne Woulfe:** It was a joint invitation.
1433. **Mr Lunn:** That is what I am asking you. Now you can express a view about it.
1434. **Father Tim Bartlett:** It came from this end.
1435. **Mr Lunn:** I know, I have gathered that, but I am asking what your preference would be, since it is going to be rescheduled anyway.
1436. **Bishop Donal McKeown:** Ultimately, we are saying the same things, but two meetings would have given an opportunity from the point of view of the theoreticians and then from the —
1437. **The Chairperson:** We have now spent five minutes discussing this. Even if we have until 12.15 pm, which is three quarters of an hour, that is time in which we were to break for lunch and then have the presentation from the GBA after that. Do we want to use that time wisely? We are not trying to say that we will constrain when it comes to raising the issues when you come back. It is entirely your decision. The Committee will accommodate what you feel is more appropriate for you, bearing in mind that there are two submissions, which, from what I see, are very similar though not identical.
1438. **Bishop Donal McKeown:** From the feeling that I got around the table, there is a sense that this deserves longer engagement than squeezing things in, and chopping it up would not be the best way. We would prefer that as well, if that is OK with you, and we are happy to arrange a time as early as possible in January.
1439. **The Chairperson:** That will create an issue for the Committee Clerk, who will have to see the knock-on effect that it has on the time that we have allocated for the clause-by-clause scrutiny. As long as members and everybody else are aware that any other delay is not the result of any of us trying to delay this for the sake of delay. We are trying to make sure that everybody is accommodated and given the time that they require.
1440. **Sister Eithne Woulfe:** I do not think that there is any intention on our part

to being party to delaying anything. We certainly recognise the need for this to progress as quickly and as effectively as possible. Nonetheless, it is wiser to take the dedicated time and the extended time that might be needed to engage in it in a meaningful and purposeful way. We appreciate you allowing us the freedom to seek rescheduling, and we thank you all for that.

1441. **The Chairperson:** For clarity, and so that you are happy, would you prefer CCMS to come on its own? Or, do you want to do it the same way as today?

1442. **Bishop Donal McKeown:** We can talk among ourselves about what we want to do. We have come to this stage now, and we will agree it with the Committee Clerk.

1443. **The Chairperson:** Yes, after this today.

1444. Obviously, this is ultimately a Committee decision. Are members content that we proceed on that basis?

Members indicated assent.

1445. **The Chairperson:** I apologise again for the delay. However, it is not uncommon. When Comhairle ne Gaelscolaíochta was here last week, I was very conscious that it was very constrained in the time that it got. There have been issues, and I am always very conscious of that, despite what some members may think about the number of questions that I ask. However, that is the role of the Committee, and if it has to take more time, then it will have to take more time.

1446. **Bishop Donal McKeown:** These are busy days for all of us just before Christmas. Perhaps immediately or shortly thereafter, we will ensure that we leave a longer time and we will not take on other commitments with statutory bodies.

1447. **The Chairperson:** Having taken more time, it will be interesting to see whether we will be any wiser. Thank you.

1448. **Sister Eithne Woulfe:** Time will tell. I wish you all a happy Christmas.

1449. **Some Members:** Thank you.

9 January 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Jim Clarke	<i>Council for Catholic</i>
Mr Gerry Lundy	<i>Maintained Schools</i>
Bishop John McAreevey	
Father Tim Bartlett	<i>Northern Ireland</i>
Professor Muredach Dynan	<i>Commission for</i>
Bishop Donal McKeown	<i>Catholic Education</i>

1450. **The Chairperson:** I ask the witnesses from the Northern Ireland Commission for Catholic Education (NICCE) and the Council for Catholic Maintained Schools (CCMS) to take their place.
1451. I say a word of welcome to you, Bishop McKeown, and to your delegation to the Education Committee. Despite the comments made in 'The Irish News' by Mr Murphy on 5 January, the Committee was ready to hear your presentation on 12 December, and it is ready to hear it today. Maybe those responsible for publicising that will clarify the issue. If the Committee is happy to do so, we might write to the Southern Education and Library Board to ask whether Mr Murphy was speaking as an individual or as a member of the board. If members are happy, we will do that. I trust that everybody has their 2013 diaries well and truly synchronised.
1452. Again, you are very welcome. You have more than ample time, and if you require more, we will happily facilitate that. I thank you for your written submissions and for being here today. I ask you to make your presentation, after which members will have questions.
1453. **Bishop Donal McKeown (Northern Ireland Commission for Catholic Education):** Thank you very much, Chair, for your warm welcome. It is good to be here. I share your regret that, for whatever reasons, the planned meeting in December did not take place as arranged. However, we appreciate the opportunity to be here at the earliest possible opportunity, and we trust that we can have a useful engagement. We are here for as long as you require us this morning. It is unfortunate that other things were built into the programme before Christmas because we, like you, are keen to ensure that we get the very best Bill here in Northern Ireland for all young people. That is our shared commitment.
1454. As you indicated, I am speaking here as chairman and on behalf of the Northern Ireland Commission for Catholic Education. I speak, therefore, for the trustees of all the almost 550 Catholic schools in Northern Ireland, which, through their primary, secondary and grammar institutions working together, teach some 45% of Northern Ireland's pupils.
1455. I am accompanied by some members and officers of CCMS, with which there is some inevitable overlap. For nearly a quarter of a century, CCMS has done an excellent job in the maintained schools that make up a very large part, but not the entirety, of the Catholic schools sector. I pass on apologies from Sister Eithne Woulfe. She was to have been here, but pulled out at short notice yesterday because of illness. We wanted her to be here as a clear voice, first, for what women have done in education and, secondly, for what religious congregations have done in education. So Professor Muredach Dynan has stepped in. Despite the nameplate, I am sure that you will recognise that he is not a religious sister. *[Laughter.]* Although we are officially representing

NICCE and CCMS, we are also here on behalf of all those who have heavily influenced and even, I may say, been passionately involved in Catholic education over the years — trustees, governors, administrators, principals, staff, parents and the communities who, together, have made a major contribution to raising educational standards in Northern Ireland. I think that no one questions that. They are fully committed to working with all other partners for the common good of young people in a reconciled and shared society that can cherish rather than fear diversity.

1456. I think that we have much to be proud of here. On 11 December, the day before we were due to meet you, figures were published that showed that we are capable of producing remarkable outcomes at primary level. They were startlingly strong figures. Now we need to grasp the nettle of radically improving our post-primary outcomes. We come to that task with a lot of experience, and I hope that all our structures can be focused on what will improve outcomes. Anything else has to be far down the line.
1457. This legislation is focused on our structures; it does not deal with many other education issues. It is one of those once-in-a-lifetime opportunities to review our imperfect educational structures in the interests of improving outcomes for all young people, so it is incumbent on all of us to build on and retain what has worked remarkably well in the past and to have the courage to correct what fails too many young people.
1458. Since the 1986 order — this is right at the heart of what we are talking about — much has been learned across the educational world about how to drive up standards. We know that young people benefit from an uncompromising commitment — the word “uncompromising” was used in an article yesterday by CCMS — first, to good governance and the contribution of empowered boards of governors; secondly, to the value of the challenge function in promoting high standards and holding people to account; thirdly, to support for those in key

leadership positions; fourthly, to quality appointments in the interests of pupils; and, fifthly, to a high level of community involvement. We have learned that those commitments really drive up standards. It would be a tragedy if any of the wisdom that we have learned over the past 26 years was to be lost, and it is important that the Bill makes that level of accumulated wisdom available to all schools.

1459. I have three main points that I would like to make. First, we recognise and welcome the recognition that there are various sectors in our educational provision. Diversity is the essence of 21st century life, as a strength rather than a weakness. In a pluralist society, parents have choices. European and human rights charters acknowledge that they have the right to an explicitly faith-based education, and we believe that it is good that the Bill accepts that various sectors with a clear shared identity and ethos can be supported to serve our whole community and will work actively with others. Therefore, we believe that sectoral bodies, including the one that we very much welcome for the controlled sector, are not merely some sop to woolly interest groups. This provision recognises that the ethos and inspiration of each sector can add value and that the Education and Skills Authority (ESA) needs that energy. Thus, we have an ongoing, close working relationship with the transferors in the interests of quality outcomes for young people. However, like all schools in Northern Ireland, our schools are publicly funded and have to contribute to the welfare of the whole community. No school can act as though accountable only to its own constituency. In the context of sectoral bodies, we are committed to working and sharing in the service of a shared future. As long as we deliver an effective and efficient use of public funds and serve the common good, we believe that legislators have to support all sectors in making their distinctive contribution.
1460. The second point is that the specific structures of the Catholic sector,

including CCMS, have shown themselves to be very capable of promoting quality educational outcomes. Therefore, many have been taken aback by the logic that says that the most effective and efficient system of managing education and driving standards should be the one that risks losing a lot. The loss of CCMS implied in the Bill represents a major sacrifice. It has served our schools, governors, teachers and pupils remarkably well. As the Bill stands, it proposes the end of CCMS and the end of the right of schools to employ their staff either through their boards of governors or through CCMS as an employer. Much power is being given over to an untried body that exists only on paper. We are being asked to take a leap of faith that this will deliver better education for everyone. If ESA is to work, it has to recognise and build on the link between employment and ethos. Therefore, unless the Bill is carefully crafted, it risks undermining the factors that have made Catholic education a significant and positive player in the Northern Ireland education system. That vital strength that we have discovered needs to be rolled out across the system, not lost or diminished. It is important also to ensure that legislation must recognise that not all sectoral bodies have the same relationship with their schools. In the Catholic sector, trustees have core ownership and planning responsibilities for all Catholic maintained and voluntary grammar schools. It will be an enormous task to provide cohesion, support, planning and common purpose for nearly 550 schools, and it is essential that the structure and funding of the sectoral support service reflect those realities.

1461. My third and final point is that we have never sought, despite caricatures to the contrary, to control or dominate. Rather, we have sought to facilitate and serve the cause of quality education for all young people. We have tried to offer leadership and direction. You will know that many people have felt inspired to offer huge personal dedication to education. The communities around our schools have succeeded in
- generating and maintaining a huge level of local community involvement that has a multiplier effect on public expenditure. We have sought to steer a middle ground between the dangers of excessive centralisation and excessive fragmentation. We have tried to balance local responsibility with the need for co-ordination. An excessively centralised system kills initiative; a fragmented system, ultimately, serves only the strong. It would be tragic if ESA disempowered local communities. We commented in our submission on the need to ensure that a cohesive Catholic sector can continue to take its place with all or other educational partners. It is our hope that the Bill will facilitate the Catholic sectoral body to provide the balance of subsidiarity and solidarity that marks a successful education culture.
1462. Mr Chairman, you and your colleagues have a difficult task. You realise that. The decisions that you take over the next few months will reverberate long into the future. We are planning for the 21st century. If you get the balance right between local initiative and cohesiveness, between the common good and individual energy, and between promoting the talented and supporting the struggling, you will merit the thanks of future generations. All of us want to get the best Bill possible — one that provides structures that will benefit all sections of our community and enable all educational sectors to work together. All our young people deserve the best. We believe that we have a major and developed contribution to make in getting that balance right.
1463. I have set out our key principles. I will ask some of my colleagues to articulate specific issues, if that is OK. Then, we are happy to take whatever questions you want to ask.
1464. **Bishop John McAreevey (Council for Catholic Maintained Schools):** Chair, first, I want to thank you and the other Committee for Education members for welcoming us here this morning. As it happens, I would not have been able to be present at the previous meeting. So its cancellation turned out to be to my

- advantage because I am glad to be here today.
1465. **The Chairperson:** Providence is a wonderful thing. [*Laughter.*]
1466. **Bishop McAreavey:** I speak today as chair of CCMS, although also as a member of NICCE. I want to focus on CCMS. In doing so, I am reminded of the statement in 'Julius Caesar':
- "I come to bury Caesar, not to praise him."*
1467. I am not sure whether we are here to bury CCMS. I want to focus on something that we, as a community, have come to value. Having had and valued it, we now, in a sense, know what we want and what we think would be helpful for the future. If you will indulge me, I will say a wee bit about what CCMS has offered. I do so with a view to saying that this is also what we need for the future.
1468. What CCMS represented for the maintained schools sector was, first, a statutory body that was entitled to be consulted and give its views on all educational policy and planning issues. It provided cohesive and co-ordinated management and leadership to schools in that sector. It did that on behalf of the trustees of those schools. It employed all teachers in that school sector. We believe that this was critical in sustaining the Catholic ethos of our schools and in maintaining the trust of parents who sent their children to our schools. We also believe that it was crucial to raising standards in the maintained school sector.
1469. CCMS also built significant relationships with other school sectors, the education and library boards, the Department and community groups. In fact, in the past two years, it has done really interesting work with the PSNI on co-ordinating ways in which the PSNI could be present in our schools and help our pupils to be aware of what the Police Service offers in, for example, the area of drugs awareness, road safety and a whole range of social issues. CCMS, because of its strategic and overarching role, was able to facilitate that and roll it out. That
- has been very positive for our schools and, indeed, for the PSNI. CCMS also guided schools on the implementation of departmental policy, and, for the record, I pay tribute to those who have served on CCMS over its 25 years, including Catholic members of the council and members from other traditions, who gave tremendous service and continue to give very valuable service through the CCMS council. Those are things that we have valued.
1470. The original ESA Bill, going back to Peter Hain's time and the post-primary review proposals, simply wiped this body, in education terms, off the blackboard. It was simply taken away. We know that there were reasons for that, but it was done without any consultation. Our view was and remains that the Bill risked losing all that CCMS had achieved and contributed to education for our young people and schools. The taking away of CCMS and the taking over of the employment role of Catholic teachers by ESA would, if implemented in the way that it was initially drafted, have significantly undermined Catholic education in the North of Ireland.
1471. We saw and still see those as threats and, to mitigate them, the Bill offers a number of things. First, it offers a guaranteed role for boards of governors in the employment of staff. That is massively important for us because it draws on the local energy that Bishop Donal spoke of and the commitment of local communities to their schools. Secondly, the Bill offers a sectoral body for each sector. In our case, we see it as a body that would advocate and promote ethos, represent the sector and carry out a number of other very significant functions. Thirdly, the Bill offers the retention of the right of CCMS to prepare and submit schemes of employment and schemes of management. Again, that is in the area of employment, which has been hugely worrying for us. Fourthly, the sectoral body can carry out a role in area planning.
1472. I have identified what we will lose with the loss of CCMS and with the loss of our employer role. I have also identified

- what the Bill presents to allay our concerns about that. We think that the Bill can still do more.
1473. I will now hand over to Father Tim Bartlett. Later, my colleagues from CCMS will address some of the specific elements in the Bill.
1474. **Father Tim Bartlett (Northern Ireland Commission for Catholic Education):** Thank you, Bishop John. Mr Chairman, let me begin by adding my words of appreciation to those expressed by Bishop Donal and Bishop John. It would be very easy to take for granted the great privilege of being able to participate in the democratic process, and we certainly do not want to take for granted the immense benefits that flow from being able to discuss the issues with you, as local politicians who know our schools, the communities that they are in and the education system that we are addressing in our discussion today. We respect and appreciate your difficult, demanding work as public representatives, and we appreciate the care that you have taken to involve the trustees, CCMS, transferors and other partners in the educational enterprise in your deliberations and considerations. We wish you well in that responsible task.
1475. As Bishop McKeown said, we have always had, and continue to have, many reservations about the ESA proposal. We are not yet completely convinced that such a highly centralised model, particularly one in which ESA is the employer of all staff, is the best way forward for raising standards for pupils. However, whatever model is finally agreed for the future, and I think that we have been responsible and constructive in engaging with the Department and others in exploring possible models for ESA, we welcome the basic principle of building that future on closer collaboration between all the partners involved in providing education in Northern Ireland, including closer collaboration and engagement with you as local political representatives.
1476. As Bishop McKeown also said, unless the Bill is carefully crafted, it risks removing for us the very cohesiveness that has made Catholic education such an active and positively contributing partner in the Northern Ireland education system. To that end, we have consistently argued that there is, as others have said, a vital link between employment and a cohesive, energising ethos in a particular school — the ethos that we know adds value to the educational enterprise of any school. ESA, as proposed in the Bill, breaks that vital link for reasons that are still by no means clear to us and, frankly, have remained somewhat unconvincing. Therefore, although we will work with the Department and others to create an agreed ESA, and although we welcome a lot of the progress that Bishop John mentioned that we have made in those negotiations with others to address some of the concerns about employment, it continues to be our view that this is unnecessary in principle and unhelpful in raising standards. We believe that it should be looked at again by you and others in the weeks and months ahead. We believe that there are creative ways of maintaining the benefits of ESA, in concept, without removing the vital link between employment and ethos, and that includes developing concepts of accountable autonomy, which other sectors may well welcome, too. We will not go into that in detail today, but we want to put that on the table.
1477. As we point out in our submission, there is also an inherent contradiction in the heads of agreement document that is referenced by the Bill and which will play an important role in its interpretation. The document was a political device not intended for, or suited to, a legislative purpose, but it is one that now seems to play a central role. The contradiction in the document cannot go unaddressed. We believe that addressing it provides an opportunity to deal creatively, constructively and through agreement with major sectors with the current position of ESA as the single employer of all staff. It opens up an opportunity for creative solutions to be found within the concept of accountable autonomy

as a means of supporting excellence across all sectors.

1478. As Bishop Donal pointed out in his opening address, the holistic formation of young people as individuals and as persons formed in, and contributing to, particular communities and a wider society and world is fundamental to the aim of Catholic education. That is why we speak so frequently of the ethos of Catholic schools and of Catholic education rather than, as some frequently try to limit us to, the concept of religious education and knowledge. That is not, and never has been, what Catholic education is solely about or how it has been understood universally. The ethos that we speak of embraces the whole educational enterprise. It embraces the formation of the child and of the whole school community as a living, learning community in which everyone influences the energising, learning and social atmosphere in which children are formed and contribute to the wider community and society. So this talk takes us beyond the concept of education as solely a formal curriculum to its formation of the person as an individual and a citizen. As has been universally and consistently recognised in Western educational systems, this includes recognising the role and responsibility of the school in relation to the spiritual, moral, intellectual and physical formation of children and the staff of the school. Therefore, we want to put on record our welcome that this holistic and comprehensive vision of education is included in the Bill and set out in clause 2. We wholly support that.
1479. In responding to that comprehensive vision of what the educational enterprise is about, the fundamental responsibility — indeed the right of Catholic trustees and others in other sectors with a particular responsibility for managing them — is to ensure that the cohesive, animating ethos of the school is consistent with the Catholic vision of education. Parents choose a Catholic education. They want it to be consistent with a Catholic vision of education, just as parents are entitled to choose

schools that are defined by other types of ethos, whether it be the language that is spoken and dominates that school or some other Christian or religious ethos, and so on. We defend that principle and the right, in a diverse and pluralist society, for all sectors and for parents to choose those kinds of school.

1480. Our responsibility, as Catholic trustees, is to ensure for the parents who choose our schools that the animating atmosphere of the school is consistent with the Catholic vision of education. We note the very strong and, as I understand it, uncontested recognition in the Bill of the right of the Irish-speaking community to ensure the ethos that reflects the values and learning objectives of its schools. It is strongly and quite properly protected in the Bill. We support that recognition in the Bill for them and for all other sectors who feel it will assist them in carrying out their responsibilities in relation to schools. So we believe that recognition and promotion of the ethos of different types of school should have a similar level of recognition in the Bill, and we are looking for that as a minimum for our participation and our assent to this Bill.
1481. It is also appropriate that ESA recognises that the primary responsibility for defining the ethos of a Catholic school belongs to the trustees of a Catholic school and, ultimately, to the appropriate religious authority in each Catholic diocese where such schools exist. That is a principle already recognised in primary and secondary legislation for Catholic and Anglican schools that have an episcopal structure in England, Wales, Scotland and the Republic of Ireland. We wish to see that similar level of recognition, in an appropriate form, in this Bill. We have asked for that. We remain unclear and unconvinced as to why that has not yet been granted in the terms that have been expressed and accepted in other parts of these islands.
1482. As Bishop John mentioned, it is, therefore, also critical for trustees to exercise their responsibility of ensuring that the school meets the Catholic

- vision of education and the standards associated with it. It is vital that the Bill continues to recognise the trustees as the submitting authority for schemes of management and employment. We argue that that is a legitimate responsibility of trustees. We welcome the engagement that trustees are obliged to have with boards of governors in regard to the schemes of management and employment, but, at the end of the day, it is the trustees who have founded the schools who have responsibility for defining what Catholic ethos is in our particular case. Therefore, it is appropriate that the trustees submit the schemes of management and employment to ESA.
1483. I mention, as an aside in that regard and for the record, that it has been mentioned by some commentators previously that there is a concern that the trustees are seeking, through this process of being the submitting authority for schemes of management in particular, to use schemes to address our position in relation to academic selection. Legislatively, it is our understanding that we cannot do that. I am happy to give an assurance that that was never ever the intention in insisting on this particular modality of influencing the ethos of the school. We want to give the assurance today that it will not be used as a mechanism for addressing that particular matter.
1484. In light of what I have just said about the recognition in legislation in other parts of these islands of the role of religious authorities in defining ethos, it is vital that the Bill contains a proper and comprehensive definition of a Catholic school that applies across all aspects of education legislation and how it is applied.
1485. There is currently a weak definition in schedule 7 to the Bill that applies only to the maintained part of our school system. You will note that, in our submission, we have proposed that a definition along the following lines be included in the Bill. It is:
- “For the purposes of the Education Orders, which apply a definition to all relevant education legislation, a Catholic school is a maintained school or a voluntary grammar school which is governed by a Scheme of Management and utilises a Scheme of Employment that are in accordance with the principles of Catholic education as defined by the Bishop of the Roman Catholic diocese in which the Catholic school is situated.”*
1486. As I said, this is not new territory when it comes to legislation in other parts of this island or the recognition of the responsibilities of the trustees of a school that is defined by its religious foundations and religious education enterprise and Catholic vision. That would be a proper appropriation of responsibility and rights to the trustees.
1487. To conclude, the inclusion of schemes of management and schemes of employment, the recognition of the trustees as the submitting authority and the definition of a Catholic school that is sufficiently comprehensive in its impact are essential if the Bill is to meet our needs and responsibilities and, in particular, to recognise our responsibility to have schools that reflect the right of parents to choose a Catholic education for their children.
1488. I will hand over to Mr Clarke to address some other finer details of the Bill.
1489. **Mr Jim Clarke (Council for Catholic Maintained Schools):** Good morning. I am going to focus on some aspects of the Bill that are more to do with the broader educational dimensions. I am going to refer specifically to our comments on clause 44(6), clause 46(1)(b), and clauses 50 and 51.
1490. It is important to recognise, as we have done over the years — and Bishop McAreavey and Bishop McKeown’s comments have reinforced the fact — that education cannot be seen as an end in itself. It has to be seen as something that contributes to society and the economy. Therefore, as society and the economy change, so, too, must education and the means by which it is delivered.

1491. Over the years, one of our successes in being set up, not as the manager of schools but as a support to the boards of governors as the managers of schools, has been that we have tried to make our governors take on responsibility for raising standards in schools. We have done that with a degree of success, but we believe that it needs to be extended further, not just in the Catholic sector but across all other sectors.
1492. The comments on clause 44 are, if you like, a starting point. I will pick up one of the strands that Father Tim mentioned, which was a phrase that has been used in a number of different ways. The only common thread is the word “autonomy”. It is either accountable, shared, managed, earned or whatever. There seem to be many different interpretations of it. However, we have seen accountable autonomy as a means of raising standards. Anything that is associated with devolving further responsibility to a board of governors should be done on the basis of encouraging a raising of standards. To do that, we believe that the boards of governors must have the will to have that authority and greater autonomy but also that there needs to be some kind of externally moderated accountability for that, so that we are assured that the school is improving.
1493. One of the ways in which we see that as being very important is in recognising the value not just of management in schools but of sound governance, leadership and management. It is also important to recognise the fact that the business of teaching and learning should primarily be in the school. It should be the interest of the school, not something that is moderated externally by the inspectorate. We see a very important role for the inspectorate, and I must say that, working with the inspectorate over the years, I believe that we have done much to raise standards in the Catholic maintained sector. However, our essential point about clause 44(6) is that it is too narrow. It views inspection as a monochrome process to be applied almost equally to every school. I am aware that the Department has a kind of risk-based assessment to inspection. Even within that, we think that the mechanisms need to be much more varied. We would actually like to see a much broader range of governance arrangements in schools.
1494. As well as that, we believe that schools that show that they are capable of being self-improving and self-evaluating need to be recognised in that respect. Indeed, more schools need to be encouraged to go down that route. They need to inspect themselves consistently through their school development planning and annual assessment of that plan. Therefore, the primary role of the inspectorate in schools that have that higher level of autonomy should be to quality assure.
1495. Quality assurance assessment is part of the current regime, but we believe that the wording of clause 44(6) is quite narrow. It could be interpreted that the role of ensuring the quality of learning and teaching in the school is entirely external to the inspectorate. We do not believe that that is true; we would much prefer to see the inspectorate having responsibility for ensuring that arrangements are in place to ensure the effectiveness of learning and teaching, either directly through the school or, in some cases, perhaps, externally from the inspectorate, as is the case under the present risk-based approach.
1496. We also believe that the reference to only management is very narrow. If we want good schools, we need good governance, and we need good leadership as well as good management. Therefore, we believe that it is much more important for the inspectorate to look at the strategic dimensions of a school rather than the narrower learning and teaching focus of the classroom alone, so that we run good organisations. Our schools need to reflect the fact that they contribute to society and the economy in the broadest sense. We want to see schools that push the barriers, do things differently, extend the curriculum and make

themselves more amenable to meeting the needs of an emerging economy and a changing society. That is our proposal in relation to clause 44(6).

1497. Our concern about clause 46(1)(b), again, reflects the views expressed by the Bishops. CCMS has been very successful in working with boards of governors at the point of inspection to improve where improvements are needed and to ensure that schools that we see as being at risk address matters before the issue of inspection comes up. I think that that is reflected by the small number of schools in the Catholic maintained sector that are in intervention. However, we have to look at how we have done that. We want to ensure that the new arrangements allow what we have done to be available not only to the Catholic sector but to all others. We think that one of the things that is important here is that the sectoral bodies, when established, need to work alongside ESA, in some cases almost as its agents, to be able to get inside and influence a board of governors, perhaps in a way that an external administrative body such as ESA may not be able to. That, in a sense, is one of the strategies that CCMS, in its tenure, has successfully exploited as a means of raising standards. As part of that, we believe that the Bill should include provisions that all report data, particularly inspection reports, related to a sector should be available to the sectoral body. We think that doing that would give the sectoral body the status to act as an agent in its own right and on behalf of ESA to ensure that boards of governors are challenged to improve and are supported in doing so. As an agent and advocate for the sector, the sectoral support body should be able to go to ESA and say, "On behalf of this school, we believe that a needs to be done and b needs to be done". Or, it must be able to say that a school needs to be challenged in particular ways.
1498. We make quite a narrow point about clauses 50 and 51. To some extent, it could be argued that our point is

addressed, to a degree, at 54(1)(c). Essentially, we see a divergence now between the Northern Ireland education system and that in England and Wales. In many respects, we can probably see a divergence between Wales and England. I believe that the revised Northern Ireland curriculum and the entitlement framework are very positive aspects of our education system in Northern Ireland, which have the potential to reflect our local needs as a society and as an economy. It would be wrong if an external dimension, that is, the examinations and qualifications system, might subvert that. However, it is very important that young people in Northern Ireland have qualifications that have the capacity to be compared favourably with any similar qualifications elsewhere, not just in the UK and Ireland, but across Europe and the world, and that they are portable. Therefore — and this is where clause 54(1)(c) does not grasp this totally — it is about ensuring that any qualifications developed in Northern Ireland by CCEA are portable, transparent in their comparisons with other jurisdictions, and have the recognition around the world that we believe our education system merits.

1499. Those are some of many broader educational issues that we think the Committee might consider in its examination of the Bill. There are many other strands of the Bill, but I do not think that it is for us, today, to do your job of line-by-line scrutiny of the Bill. However, we should not lose sight of the importance of educational outcome here and the means by which we can achieve better educational outcomes. We should also not lose sight of the means by which we have been able to improve our system over the years to bring, for instance, a recognition through the progress in international reading literacy study and trends in international mathematics and science study data, but also to ask the question: if that is the case at primary level, why are we underperforming in comparison to other countries in relation to our post-primary outcomes, and why are the achievements of our education

- system not translated into a successful economy in Northern Ireland? Those are the broader issues that we wish to bring to your attention here today.
1500. I now want to refer some other matters to my colleague Gerry Lundy.
1501. **Mr Gerry Lundy (Council for Catholic Maintained Schools):** I will be very brief. Thank you for the opportunity to talk to you today. The points that I will make are quite small, but we feel that they are important. It goes back again to part of the presentation made by Father Tim in respect of clarity about the sector and the cohesiveness of the sector.
1502. The first point that I want to make refers to the membership of ESA. We welcome that the trustees will have formal representation on the ESA board, but we would like more clarity brought to that membership. In paragraph 2(c)(ii) of schedule 1 to the Bill, it states:
- “persons appearing to the Department to represent the interests of trustees of maintained schools”.*
1503. The Catholic schools are all voluntary schools, of which a percentage — the majority — are maintained schools. We have a concern about that wording and suggest that it should change from “the interests of trustees of maintained schools” to “the interests of trustees of Catholic schools”, because the trustees are trustees of Catholic voluntary grammars as well. The Bill as it is written seems to indicate that schools or the trustees of that sector would not have any representation on ESA.
1504. In respect of their appointment after consultation with persons or bodies appearing to the Department to represent such interests, we believe that the consultation should also be with the sectoral support body in respect of appointing that member. That is a point that we want to make. We also want to make a point about the appointment and consultation in respect of governors to our schools, which relates to clause 39(2). We welcome that the relevant sectoral body has to be consulted by ESA and the board of governors on appointment of a board of governors. We feel that there should be a duty to consult, but it should be strengthened to “consult with and have due regard to the view of the sectoral support body”. We also believe that, in all these types of consultations, there is a need for guidance on the nature of such a consultation and how it might be carried out so that it is not done on an ad hoc basis and does not vary from year to year or from sector to sector.
1505. Finally, I would like to revisit the comments made by Father Tim. We feel very clearly that there is a need for a clear definition of a “Catholic school”.
1506. **The Chairperson:** Thank you very much. That gives us an overview of the issues that you want to raise. Before we go to questions, I welcome to the Committee Hannah and Oonagh from Belfast High School. I believe that they are on work experience with Trevor and the Alliance Party. You are very welcome to the Committee for Education. We trust that it does not damage your education — *[Laughter.]* — and that it gives you a wider perspective of life within the confines of Stormont. We wish you well in your studies and your time in work experience.
1507. When we come to this issue — and this is where we find ourselves when we go through the Bill — it is always difficult to know where to start, because there is such variety. The comment has been made that it is a relatively small Bill. That is according to Mr Murphy, who seems to have exercised my mind considerably. Although it is a small Bill of 67 clauses and seven schedules, it is very complex. The point has been well made that the face and the nature of education in Northern Ireland for many years to come will depend on the outcome of the changes. So, it is difficult to know exactly where to start.
1508. However, I will go back to Gerry’s final point about the membership of ESA, which has been raised by a number of organisations, some of whom claim that they have no representation at all on ESA, and others, such as you, who

- say that you are on ESA but that there is an issue about the way in which your membership is defined. It comes round to the issue of the definition of a Catholic school or maintained school. What is the current position on how schools in the Catholic sector are represented on education and library boards since the introduction of CCMS in 1989?
1509. **Mr J Clarke:** It actually has not changed. The trustees represent the Catholic sector.
1510. **The Chairperson:** So, the current situation is that a number of schools under the wide umbrella of Catholic schools have not been represented on education and library boards?
1511. **Mr J Clarke:** Sorry. When I said, “not changed”, I meant not changed as a consequence of CCMS’s coming into being. The trustees represent Catholic schools, as I understand it, on education and library boards. What we are proposing here is that trustees should continue to represent Catholic schools. The Bill says that they are representatives of Catholic maintained schools only. We are saying that they should represent all Catholic schools. Of course, that can be done. However, we think that it would make more sense for the Bill to recognise that.
1512. **Mr Lundy:** Can I just make the point that the Bill actually says, “the trustees of maintained schools.” A number of schools in Northern Ireland are maintained, but are not Catholic maintained schools. So, technically, the Bill as it is written does not give representation to them. The core issue is that we think that, “trustees of Catholic schools” clarifies that and reflects back to what the 1986 order and, prior to that, the education and library boards established. It is the trustees of Catholic schools who have membership of the board.
1513. **The Chairperson:** Does anybody else want to comment on that? No. OK.
1514. I am trying to establish where we are, as we move through some of those questions, and where we want to go.
- Obviously, the Education Bill is the basis of all those discussions. One issue that was raised during the presentation was the fact that there is diversity of provision in the education system and also that, as a society, we need to continue to work together towards a shared society and future, and respect for diversity.
1515. Where do Catholic schools and, in particular, the two organisations, CCMS and the trustees who are here today, sit with regard to integrated schools, for example? How do your two organisations look at and interact with Catholic schools? Is it still the case that places on the boards of governors of integrated schools that are set aside for the Catholic sector are still not filled by yourselves? Can you clarify that so that we have some understanding of your view on how, in practice, sharing, respect, and so on, is implemented on a day-to-day basis?
1516. **Bishop McKeown:** Since Bain, there has been a recognition of the need to move away from a focus on integrated education with a capital “I” and capital “E” to a focus on integrating education. In that sense, the idea that there is just one virtuous sector in a shared future was settled a long time ago. We are fully committed to ensuring that our schools are as integrated as possible. St Columbanus’ College in Bangor, I suggest, is more integrated, numbers-wise, than Strangford College. Just because you have a franchise does not mean that you have a particular level of virtue in an area.
1517. You asked about appointing Catholic governors to integrated schools. There are many Catholic governors in integrated schools. It is not the job of the trustees to appoint governors to schools over which we have no ownership responsibility and for which we have no responsibility whatever, but we are very happy to encourage members of parishes and members of local communities to take those roles if they see fit and if the owners of the integrated school wish to invite them. There is absolutely no problem with

them taking that up. We are concerned about how we can best maximise the contribution of our sector for the common good, and we are very happy that other sectors are supported, enabled and primed to do that as well. I do not see a conflict there. However, the focus is on integrating education rather than just on a particular sector, and Joanne Hughes and co, in their recent article on the shared education programme, have been very clear about that. We are moving from where we are at the present time.

1518. **Bishop McAreavey:** I will add to that. First, we are trying to foster and promote contact between schools and sectors. Sometimes, it is hard to do that even in our own sector because schools can be very independent and have a life of their own, and it causes a bit of extra work for principals, and so on, even to co-operate with a neighbouring school in the same sector. However, we want to support the broad principle of trying to maximise co-operation and contact for children and youngsters, and one very successful way in which that has been done in the past few years has been through the area learning communities. I know that our principals, at least those in the Newry area whom I talk to from time to time, find that a helpful contact. It breaks down some of the barriers in our sector and outside it.
1519. **Mr J Clarke:** In a letter to our schools last year, we did not focus on the concept of dependency or independence but that of interdependence. We saw that interdependence in the sector and across sectors, and, when I appeared before you with the chief executives of the education and library boards on area planning or the viability audit some time ago, I made the point that we are very strongly supportive of the concept of sharing in education. Bishop McKeown talked about the integrating of education, and we believe that the potential for sharing by association with the transferors and the Catholic sector has a greater means of delivering that more integrated society and more integrating concept of education

than the actual sectoral element of the integrated sector. However, in all our deliberations from 2006 onward, particularly on the establishment of sectoral bodies, we have always maintained that every sector should have the same rights. We were not looking for anything over and above what others have. So, we believe in the concept of sharing, and we think that the potential for sharing with the other sectoral bodies has increased as a consequence of some of the potential outcomes of the Bill. We very much keep in mind the importance of sharing and integrating in education.

1520. Two words struck me in the presentations by the transferors and the controlled schools' body. One was "sharing" and the other was "equality". We very much want to see those words forming the foundation stones of our emerging education system.
1521. **The Chairperson:** In relation to —. Sorry, Tim, you want to come in.
1522. **Father Bartlett:** I want to make a wide point and a specific point. Obviously, we want a peaceful and a reconciled society, but I get a little bit anxious about the term "integration" per se. It has always had a kind of social engineering overtone to it. I want to live in a normal society that, in our context and history, is a peaceful, reconciled and neighbourly society. In that context, we, as a sector, are fully committed to looking at creative ways in which we can continue to share the educational enterprise.
1523. **To come to the narrower point:** one thing that is maybe not known publicly is that we actively supported the transferors' interests in the negotiations about the Bill to ensure that their rights were secured when, in fact, they were originally jeopardised by the ESA concept. That is why we have reconstructed ESA from its original proposal around the 1986 order — I think that I am right in referring to the 1986 order, but it could be the 1989 order. We welcome that, because it gives us a partner in a faith context with

whom we can explore the possibility, for the first time in Northern Ireland, to do what we do in Britain, which is to look at the possibility of joint faith arrangements. We have often been challenged about why we do not have those in Northern Ireland. Part of the difficulty is that we were never able to get a partner from a faith point of view. Our joint schools are joint church and joint faith schools in England. We welcome, as Jim and others said, the new opportunities that that creates for new and creative models, and we are very open to that possibility.

1524. **Bishop McKeown:** May I come in with one point? In Trevor Gribben's submission on 5 December, there may have been a slight slip, at least in one version of the Hansard report, which states:

"If groups of schools choose to come together to buy in support services, and if that is done on a sectoral basis, we could end up in Northern Ireland with a Catholic caste system"

— caste rather than CASS —

1525. **"and a caste system for other schools."**

I can assure you that we are not looking for a Catholic caste system, and perhaps the record might be checked to ensure that "CASS" was the word intended, rather than "caste".

1526. **The Chairperson:** I would not want a fallout between the Catholic bishops and the Presbyterian Church about whether it is CASS or caste, given my views. You might put me in a very difficult position.
1527. I have listened to all that has been said, including what Tim said about a normal society. In the current practices that go on — take out the difference that we will all have about what an integrated school is — is there the concept of some of them coming together? Focus in on that, because it is important in relation to the trajectory of where the Bill goes. There is an issue that we still have not concluded about what needs to be in the Bill with regard to shared education, how much stronger it needs to be, or how much more robust it needs to be. That has been set out, certainly by my party leader, as a very

important issue. There is the current practice in relation to children who are from a Catholic background and attend an integrated school. Are they treated in a "normal" society, as you referred to it, Tim, in the same way as a Catholic child who attends a maintained school — a Catholic school — particularly in relation to preparation for the sacraments?

1528. **Bishop McAreavey:** Yes, for example, when it comes to the celebration of first communion or confirmation in our parishes. Sometimes, for first communion, they have separate celebrations by their own choice because the school makes a big celebration of it. The whole school, in the case of some integrated schools, would have a celebration on that day. For confirmation, that is done in one ceremony, with the children from the integrated school and the children from the local Catholic school. Sometimes, they alternate, with one school taking the lead role in music and the other taking the lead role the following year. They do not have any sense of being treated differently, and I know, from my experience of places like Banbridge, that that works well for both schools involved.
1529. **Mr Lunn:** It is good to see you all here. Happy new year. You mentioned this whole question of integrating education. Obviously, I am a supporter of that, as I am a supporter of the integrated school movement. I am quite glad, Bishop John, that you have clarified that you are satisfied with the way the requirements of Catholic children are dealt with in integrated schools. I think it is a credit to those schools that they manage that so well.
1530. I wonder whether you see any contradiction in what you have said about your desire to see education integrated. I do not mean on the social engineering model that you mentioned, but just in general, because that is the way to go. Do you not see any contradiction between that and your insistence that your sector has to be clearly defined, independent and strictly Catholic? You want the term

- changed from “maintained schools” to “Catholic schools” in various areas of this Bill. You want to emphasise the Catholic ethos of your schools. That is fair enough. Do you see any contradiction between that position and the avowed desire, which at least four of you emphasised today again, to see education becoming more integrated?
1531. **Bishop McAreavey:** A Catholic school is also a welcoming school, and can welcome pupils from the Catholic tradition and from other traditions. For example, I have come across Muslim families who send their children to Catholic schools because they value the fact that those are schools where children pray and where there is a strong religious ethos. It is not their own religious ethos, but they value a religious ethos as opposed to a purely secular one. I do not want to overstate that point, Trevor, and in the Northern Ireland context, it is not a massive thing. There is not a conflict between wanting to have a clear identity and ethos, and, at the same time, being open and welcoming to children and parents from other traditions who want to have their children given, say, a Catholic primary education. We are not talking about a hard-line approach here; we are simply asking for what we do to be recognised in legislation and to be put down in the same way as Irish-language schools and integrated schools are defined. We find the absence of that to be weak, in the sense that it simply does not recognise what we do. Given that the ethos is central to what we do, we would like some acknowledgement of that in the overall range of options in the education sector.
1532. **Mr Lunn:** I have plenty of other points, Chairman, but I will wait.
1533. **The Chairperson:** Yes, I will come back to you.
1534. I want to clarify something. Obviously the proposal, as the Bill stands, is for the removal of CCMS. The bishop referred to ‘Julius Caesar’. I can remember going to the farewell dinner for the chief executive of CCMS. It was like attending a funeral without a corpse. I do not know how long ago that was. Was it two years ago?
1535. **Mr J Clarke:** It was actually for CCMS.
1536. **The Chairperson:** It was for CCMS, yes.
1537. **Mr J Clarke:** It was not for the chief executive. It was in December 2009.
1538. **The Chairperson:** That shows you how these things can —
1539. **Mr J Clarke:** You have not changed, Mervyn. *[Laughter.]*
1540. **The Chairperson:** I would like to try to gain some understanding of this point from you. As we have seen, unfortunately, in recent days, where people perceive that they have lost something, it causes huge concern. On this issue, CCMS is clearly losing a statutory role. However, although it is concerned about it, it is not vociferous. It is not as exercised about the loss of that statutory role and its replacement with a merely consultative role. Why is that?
1541. Tim mentioned the issue of the transferors. The transferors were very clear that they were not going to accept, at any point, the loss of the legal rights that were conferred on them as a result of the Education Order and all that. In a sense, you were given a statutory responsibility and role in 1989, and now, in 2013, there is a proposal to remove that, but you are simply saying that, although you are not happy about it, you have a, b and c. How do you square that with where you sit as organisations that have managed and been involved in Catholic education?
1542. **Bishop McAreavey:** There were two issues that went hard with us, the first of which was the employment of our own teachers. If you run a business, it is essential that you choose your own staff. You would not hand the employment of staff to somebody else. You want them to be your staff and you want a relationship with them that is based on the fact that you are working together.

1543. The employment contract sets up a relationship between the schools — the employers — and their teachers. What is happening now is that a third party, which is ESA, is coming into that relationship. I can understand that up to a point because the Government pay all teachers and there are a lot of similar issues. Nevertheless, it broke that relationship. That, for us, was always the key issue, and remains so, frankly.

1544. The loss of that direct contracting relationship between ourselves as trustees and the boards of governors and our teachers is something that we, frankly, are not reconciled to. It is not because we want to hold control, but because we believe that the ethos and the issue of trust, and so on, around education, in a sense, happen around the contract of employment.

1545. That is, perhaps, part of the reason why we did not complain about the loss of CCMS or express our views as strongly as we should have done. Certainly, however, over time, we have gained a very clear sense of the kinds of things that I have articulated this morning — the things that we have lost. So, too, have our colleagues in the voluntary Catholic schools, because even though they were not subject to CCMS, they often sought advice on HR issues or used documents that were produced by CCMS.

1546. We see a significant loss there, and I have tried to explain that this morning. On the other hand, I suppose, we did not want to say that we wanted to hold onto things no matter what was produced. We wanted to see what government could offer in place of those in the ESA Bill. In fact, over the past two years or so, the Department has heard our concerns and has acted to meet them.

1547. I do not think that we regard what we are getting now as a full compensation for what we have lost. We still feel that we are down a peg.

1548. **Mr J Clarke:** Bishop McKeown's comments reflect the fact that we have recognised that it is a political decision.

We have to make the most of it in a very constructive way. I can assure you that, from 2006, when the original 19 papers emerged, we went through them assiduously and identified the obstacles to what we considered to be not just the improvement of Catholic education but education generally. We worked very solidly throughout that period to try to influence this legislation to give us as much as we think we need. As I said, we are in changing times. The words "sharing", "integration", "pluralism" and "normal society" have been used, but within that normal society, there is recognition, which I think reflects back on Trevor's point, that faith-based education is important in the rest of the world. It should be important here in Northern Ireland and there should be provision for it. In our negotiations and, indeed, in our presentations here today, we have sought to recognise that change is afoot, but we tried to ensure that that change does not damage that which is good and has the potential to improve — not just for the Catholic sector but for all sectors — what our education system offers to all our young people.

1549. **Father Bartlett:** As Jim said, we have consistently said that we would prefer a statutory body. We have consistently said that we want to remain as the employer. The Department has consistently told us that that is not politically acceptable. So, as responsible citizens, we have engaged constructively and creatively in trying to find a suitable alternative, but, as I said in my presentation, we remain to be convinced about all of this.

1550. **The Chairperson:** I want to get round members, but Jonathan has an issue he wants to raise.

1551. **Mr Craig:** I am going to ask a very simple question specifically on the single employing authority because it intrigues me and I do not know how it will work. I hear your opposition to it. At the minute, because you are the employing authority and employ the teachers in your sector, you are in a unique position. I think what has

been left unsaid by you is that, in that position, you are able to impose the Catholic certificate on your teaching staff, and that is all part of your faith-based system. That is the way it is at present, and I will keep my personal views out of this. When you go to having a single employing authority — I have had a good long think about this — under existing employment laws in Northern Ireland with equality legislation and all the rest of it, that has to go. You cannot have a single employer applying two standards, or, in the case of education, it may try to apply seven standards. It just cannot legally be done. Is that at the root of your objections to the single employing authority?

1552. **Father Bartlett:** The simple answer is no. As Bishop Donal articulated very well, our concern is the connection between employment, ethos and raising standards. It has been central to, and has been proven to be effective in, raising standards across the whole educational enterprise. Within that, there is, of course, our responsibility as trustees — in our case of schools defined by the Catholic philosophy of the educational enterprise — to ensure that parents have the right to choose an education that meets the Catholic vision and understanding of education from among the range of options in a diverse and pluralist society. So, that is part of it, and the Catholic certificate is part of the mechanism for ensuring that.
1553. By the way, European law allows for exceptions where there is a genuine occupational requirement. That is the legal basis, affirmed by the Equality Commission's review of the RE certificate, where every teacher in a Catholic primary school is an RE teacher and where most teachers in Catholic secondary schools and grammar schools have to be RE teachers as well. It is not applied all the time in secondary schools because not every teacher has to be an RE teacher. That goes back to our point that it is not that every Catholic teacher has to be Catholic, but they have to support the

wider enterprise of the school and its ethos.

1554. We would argue that other sectors should seek to apply some other mechanism to ensure the ethos that they want to define their school. A simple and obvious example is a language-based school, where you would quite properly expect the teachers to be able to speak the language to a sufficient degree and be sympathetic to cultural and other aspects of it. That is without prejudice to whatever the particular language might be in any country. It is a similar principle. We have no objection, as Jim quite properly said, to these principles applying equally to all schools, but I would challenge your view that legally it is not possible. The Equality Commission has reviewed it and said that legally it is possible in European law and in our own equality law.
1555. **Mr J Clarke:** One of the things about different employment schemes is that they can have variances as long as they are legal. The point that Tim makes is that the exemption is legal. My understanding is that the exemption was not sought initially by the Catholic sector; it was sought by the Protestant churches, and the Catholic sector also benefited from that obviously. We do not see that specifically as a threat through this Bill. It may be something that equality legislation may look at some time, but that is a different matter.
1556. **Mr Craig:** Let me get this straight: you see a situation where there will be several different contracts of employment under a single employing authority.
1557. **Mr J Clarke:** What is being proposed is that ESA will prepare a draft scheme of employment and scheme of management that all the submitting authorities can look at. They will then produce their own schemes based around that model, but extending it. That is how we see it. We do not anticipate that the model from the Department will make any change to the exemption.

1558. **Mr Craig:** I will not argue with you about it if that is the way it is going to go, but does that not call into question why you need a single employing authority, because, technically, you will have split it up into the sectors?
1559. **Mr J Clarke:** I am not going to defend what is proposed in the legislation. What we have sought to do today is give you our view on how that legislation can best meet the needs of the Catholic sector going into the future. I will leave it for the Department to answer that specific question, although I could, but I will not.
1560. **Mr Craig:** We will need clarification on this issue when the departmental official comes here later because it is intriguing.
1561. **Bishop McAreavey:** Chair, you made the point about 10 minutes ago that this was a small Bill, but it is massively complex.
1562. **The Chairperson:** I was only commenting on Patrick Murphy's piece in 'The Irish News'. 'The Irish News' will be delighted that I read its periodical. He said that it was a small Bill, and I was only reflecting what he said.
1563. **Bishop McAreavey:** Perhaps, in the overall scheme of things, it is a small Bill, but it is hugely sensitive.
1564. **The Chairperson:** It is.
1565. **Bishop McAreavey:** It is sensitive because it touches on how parents raise their children, the values that they hand on and how they do that, and so on. Nothing is closer to parents and citizens than what happens in education. Jonathan is right: one of the fears that we had with the idea of a single employing authority was that somehow all the nuances and sensitivities would simply be cleared off the table by a Minister who was an avowed secularist. I am not sure whether he was opposed to what Catholics or Christians of other denominations or churches do in their schools, whether he simply did not know or care or whether he did not value those things. That, frankly, is still one of the things that worries us about ESA.
1566. In this whole area of faith education and culture, there are things that people hear and things that people communicate. In a sense, where there is a common language, people pick those things up, but where someone does not speak the language at all — I am not talking about a different faith; I am just talking about a purely secularist view — those issues are not even heard. To some extent, I think that happened with the initial idea of a single employing authority.
1567. From an administrative point of view, there are attractions to it. Departments are the same everywhere. They want to control things, and they want to streamline them and simplify them, but this is not about bureaucratic change. It is far too sensitive to be just about that. That is why parents who have young children who have not gone to school yet would be concerned if they felt that they could not be sure what their school would be like. The only way you can be sure what a school will be like is if you control who teaches there. That is what it is about. So, the issues here are serious. They are not bureaucratic or administrative; they are fundamentally very profound. We would like to facilitate those and be as communautaire — as they would say in Europe — as you want to be, but not at the expense of fundamental values.
1568. **The Chairperson:** I am going to bring in Trevor, but before I do, I want to say that I thought that I was at the point of agreeing with a bishop for the first time when you described the Department as being all out to control. *[Laughter.]* You are absolutely right on that one. Then, you went on to say that the reason why you want to retain that is so that you can control your staff. *[Laughter.]* I will let that one just sit there. After Trevor, we must get to other members. Can you make a particular point, so that we do not lose the train of thought — if there ever was one?
1569. **Mr Lunn:** Chairman, I think that Father Tim and Jim have probably made the point for me. I think that you have had a note passed to you to this effect: there

- is nothing in the Bill that would preclude Catholic schools from continuing to insist on the Catholic certificate. Frankly, nor should there be. It is just not there.
1570. **The Chairperson:** Trevor, your observations are very astute. I can confirm that the Bill will not affect in any way the requirements for a certificate. We will get Chris to clarify that. I will put it in the Hansard report. Then, he is responsible, not me. *[Laughter.]*
1571. **Mr Lunn:** I might also put it in the Hansard report, Chairman, that it is one of the virtues of the Bill that it provides for schemes of employment to be prepared by the schools themselves with appropriate room for variation and different criteria to be used. I listened to Bishop John. I think that you have welcomed the scheme of employment section of the Bill about three times, and you have condemned it four times. *[Laughter.]* At some point, you will have to make up your mind.
1572. **Mr Kinahan:** Thank you very much for your presentation. Like the Chair, I have pages of questions on different things that I would like to ask. We have touched on various matters. I will start broadly, if I may. My biggest concern, which we have touched on, links to sharing or integrating. My party, and many of us, want to move towards a single, shared education system in the long term. We are about to put forward a Bill, which, I get the impression, you do not really like, that will set everything in stone for the next 40, 50 or 60 years. We have all got to get it right. I am very concerned that we are not looking at how to get balance, but that each person is fighting their corner. You want your Catholic education, which is extremely good, in your way just as much as the other sectors want theirs. Somehow, as a group, we have got to find balance. We touched on the idea of a small Bill, which I like. I thought that small was meant to be beautiful. It actually looks very much the opposite: small could be very ugly if we get it wrong. That is enough of my rambling.
1573. I am concerned that we do not have NICIE, Comhairle na Gaelscolaíochta or the grammars involved in the ESA board. I would like to hear how you think we should include those bodies, or whether they should be included. Within that, when you get to your own sectoral body or the other sectoral bodies, have you decided what your four would comprise in style? If you look at it cleanly at the beginning, you see that we have no representation from principals, businessmen or anyone outside. Yet, we have got to find the balance that gives us faith and education, but, at the same time, mirrors society. So, I will throw that at you: have you thought your way through how we can make the ESA body more representative of everybody? Then, I wonder what you are doing about your own four. That is my first question.
1574. **Bishop McKeown:** It is an interesting philosophical question about whether the ESA board should represent only education interests and politicians. That is a philosophical point. There obviously are limitations to that. The question is then about how you get representation from the various education interests on the ESA board. According to the current language, there will be four controlled sector representatives and four maintained sector representatives. That works out at something like 89% of the total school-going population. The Irish-medium sector is small. The integrated sector is less than 5%. The voluntary grammar schools outside the Catholic sector educate 6·6% of Northern Ireland's school-going population. Together they make up around 11% or 12% of the total school-going population. We are quite happy for other sectors to be represented, but you need to ensure that there is some relationship between the representation and the size of the sectors.
1575. What is the point of ESA and what is the role of the ESA board? Personally, I think the more voices that you have around the table to inform educational decisions, the better. I have no problem with a broader range of representation.

- We certainly have not worked out who our representative will be.
1576. **Father Bartlett:** We have not thought it through. It is ultimately a political decision. It would be fair to say that we have no opposition in principle to how the ESA board is composed and are open to the benefit of wider voices. However, the proportionality remains very important.
1577. **Mr Kinahan:** I know.
1578. **Father Bartlett:** As long as the proportionality in the overall numbers for the various sectors remains intact, I do not think that, in principle, we will have any objection.
1579. **The Chairperson:** The point has been made to others that you have been given four places, the transferors. You gave up a place to the controlled grammars to sit as one of your four. Of the four that were given to the trustees, is there a view that you would be able to give one of those places to the maintained grammars or to —
1580. **Bishop McKeown:** There are no maintained grammars.
1581. **The Chairperson:** We were told that Northern Ireland is moving on with terminology. Catholic grammar schools, I mean. Could you consider that?
1582. **Professor Muredach Dynan (Northern Ireland Commission for Catholic Education):** The way in which it works in the Catholic sector is that I, as a trustee, represent around nine schools, of which four are primary, two are non-grammar and three are grammar. I mention that because that is the position of quite a few trustees, such as Sister Eithne Woulfe's group, and so on. They are the religious trustees. We see ourselves as having responsibility for schools that are currently called maintained and are grammar and primary, so, in fact, I would be most surprised if we could come up with four names that had not been discussed at all for the Catholic sector.
1583. Suppose that, in theory, I was one of the people asked to go forward. I could not be identified as maintained or grammar, because I cover both. I do not think that it is a real issue. Our concern was that the grammar schools seemed to be almost accidentally left out of our group. By defining our side as representing the maintained sector, it left out our grammar schools. We really wanted the grammar schools in the Catholic sector to be included in that representation.
1584. I think that we are speaking on the same point. We do not want the four representatives of the Catholic sector to in any way exclude grammars. It is very important that the grammar schools be in on this, and we know that they have expressed concerns about it.
1585. Our concern about the Catholic sector issue is not at all about not having representation for the grammar schools. Let us be clear that we value the grammar schools, Catholic and otherwise, and they are very important to Northern Ireland's education system, in my view. When we talk about the Catholic sector, we appreciate that there are voluntary and maintained schools, but in talking about the ethos issues and such aspects, we do not want to divide it into two lumps. We see it as a coherent sector. That is a bit of a clumsy answer, but I hope that it goes a long way to saying that we would certainly have representation of voluntary grammar schools.
1586. **Mr Kinahan:** I take on board Father Tim's proportionality point, but there is a need — you all said it yourselves — to have everybody represented. You said that the percentage of voluntary grammars at your end is 6%, but in the whole grammar sector, it is much bigger.
1587. **Professor Dynan:** That is right.
1588. **Mr Kinahan:** It could be a separate body on ESA, but it would throw out the proportionality of the whole body. If we all want to get everybody on to that board and properly represented, we have to get them in there somehow. That is why I raised that point. Furthermore —

1589. **Professor Dynan:** Certainly, they will be in from the four representatives, provided that they are not what you call “maintained”. To get the grammar schools in, you have to widen the definition.
1590. **Mr Kinahan:** Furthermore, we miss out the integrated sector, which has a chance of getting in if the Minister appoints it as one of the four; otherwise, it ends up being represented only by politicians. I think that we have to look at the whole balance of the proportion and how it will work, and I was wondering whether you had a solution to that. You touched on it.
1591. **Father Bartlett:** Danny, may I interrupt you for a second? I have to leave, and I convey my sincere apologies. I have to go to the other jurisdiction on the island to prepare to appear tomorrow before a similar body in that jurisdiction on another sensitive issue.
1592. **The Chairperson:** Is it England, Scotland or Wales that you are for? *[Laughter.]*
1593. **Father Bartlett:** Thank you very much, Chair and members, for your courtesy and for listening to us so constructively. I look forward to hearing from my colleagues as to how this continues.
1594. **The Chairperson:** Thanks, Tim.
1595. **Mr Kinahan:** My second point is that when we get to governors in schools, we get to this point of balance of who is going to control them. We are keen to see a light touch adopted, where the governors still have a say in how they run the school. However, one of the notes that we have been given states that CCMS or NICCE would like precedence over boards of governors. I was concerned when I went to the Primary School Governors Association the other day. There were a lot of very good ideas, which Jim touched on, of how we should be judging governors and their roles and their having a statutory role, but it was terrifying for the volunteers who were there. It became very evident that someone needed to take proper leadership, which involves sitting down and talking to the governors and showing them the things that they need to be good at, showing them the statutory role and how they could get to that stage.
1596. I think that you are better at this than some of the other sectors, but what plans do you have to try always to be working towards and bringing with you a comfortable, voluntary system where governors want to be governors, because they are vital to the system, but, at the same time, where they are not being dictated to from the top.
1597. **Bishop McKeown:** The relationship between trustees and governors has been recalibrated here. In the 1989 order, if I remember rightly, the focus was on giving almost all authority to the governors. One might suggest with a Brian Mawhinney hope that they would opt out of their sectors and become integrated with a capital “I”. That did not happen in the vast majority of cases. In the absence of CCMS, we are looking to recalibrate the ability of trustees, who have an ongoing responsibility for the schools over decades, and the responsibility of governors, who are there for four years and who represent, inevitably, some of the local community and also the current cohort of pupils.
1598. How do we balance the long-term planning and preparation for those who are currently in primary school with the focus that many governors have on our current raft of pupils? We are happy to get that balance correct to ensure that governors do not feel oppressed and rather, on the contrary, feel that they have a sense of the vision and energy that will free them to fly within a context. How to achieve that loose and tight thing is difficult in all businesses. We are hoping to get that balance right here. We need high-quality governors, and we have wonderful dedication from many people. I made brief reference to the fact that complete fragmentation looks after only the strong, and we have to ensure that we have a structure in place that looks after the people who are being failed in all sorts of ways by our society. We want to get it right for them as well, while, at the same time,

- not cramping the style of those who are dedicated and far-forward looking.
1599. **Bishop McAreavey:** May I add one point? Danny, since the trustees are currently entitled to nominate a certain number of members to boards of governors, that will continue. Finding people to volunteer in itself involves a fair amount of work. Volunteerism is not as strong as perhaps it was in the past, so there is a task of finding people and checking that they have the proper experience that you want for a board of governors, a background in education, and so on. That is one of the things that we hope that our sectoral body will help us to do. Moreover, we see ourselves as having ongoing work to do in the preparation of new governors taking up their positions so that they understand their position and the vision of the school that the trustees have. We must continue that support for governors.
1600. However, I take your point. It is one thing to ask people to take on responsibilities, but a lot of people are doing this after their day's work, and there is a limit to the energy and time that they have to bring to it, so we want to support them as best we can.
1601. **Mr J Clarke:** I will add a few points to that. The 1989 order gives responsibility to CCMS for the effective management and control of schools through the boards of governors. I made the point that we have to make improvements from the bottom up, from the schools up, and, therefore, we need to give the resources to the school.
1602. There were two things that we saw missing from the heads of agreement. One was a clear statement and definition of "accountable autonomy", because we believe that what the voluntary grammar schools have, in many respects, is positive for them. However, the word "equality" is very important here. Bishop McKeown has made the point that the system should be available to everyone.
1603. In the Catholic maintained sector, we have, in the past couple of years, issued some advice to boards of governors as to how they should relate to the principal in the management of the school. For instance, one of the things that we wanted was a profile of what kinds of skills a board of governors ought to have. If a board does not have such a profile, the governors should have training to provide that. We also wanted to see greater continuity within boards of governors. Therefore, rather than having a Big Bang-style change after four years, we would have preferred to see a mid-term change to part of the board of governors and then another mid-term change so that there is a degree of continuity of experience.
1604. We also believe that governors are there because they want to serve and want to do a good job. That is one of the reasons why we feel quite justified in challenging boards of governors that appear not to be performing, or if their school is not performing. We think that those people want to do a good job but simply need the help to do it.
1605. We believe that a wider range of governance arrangements and a system of accountable autonomy will help governors to raise standards. Therefore, governance for us is very important.
1606. **Bishop McKeown:** Our specific concern, which you have picked up quite rightly, Danny, is that the trustees have a long-term role, while governors have a short-term one. If it comes to the scheme of management, clearly trustees will want to contact and consult with the board of governors. However, at the end of the day, there has to be someone who makes the decision about the overall identity of the school, and rather than end up with the board of governors and trustees fighting, some clarity should be built into the system as early as possible for someone who will decide, having consulted and paid due attention, and all those things. There has to be clarity as to who makes the decision. Otherwise, it is just a table-tennis game with no decisions taken, to the detriment of education.

1607. **Mr Kinahan:** Thank you. I have other questions that I will ask later.
1608. **Mr Rogers:** You are very welcome and thank you for your presentations. I wish to declare an interest as chairman of the board of governors of a maintained school.
1609. The word “ethos” has come up frequently this morning. In one of your comments, Bishop John, you said that we had lost something. I am getting the feeling that, in the Bill as it stands, Catholic education is losing out. You can comment on that for me. I would like to know what safeguards you would like to see enshrined in the Bill to ensure that Catholic education does not lose out but is strengthened.
1610. **Bishop McAreavey:** I addressed that point earlier. The first thing is not a point that I made but one that has been made since I spoke. There should be a recognition in the Bill that there is such a thing as Catholic education, simply to define it. That has been done for England and Scotland. It is doable and workable, and it would simply place it in there as something that is being done and that is respected and acknowledged in the law of the land.
1611. The ongoing work of the boards of governors is crucial for us. You know from your own experience that boards of governors spend hours on selection panels, disciplinary panels and all sorts of things. The last thing that we want is to have people saying that things are all being dealt with from Belfast or wherever the ESA headquarters are. We want people to have a sense that they have a significant say in the affairs of their own school. As long as the role of the boards of governors in employment issues and disciplinary issues, should they arise, is guaranteed, we will be relatively happy.
1612. The role of the sectoral support body is also important because it allows the trustees to have a body that advocates, expresses its views and gives its perspective on current issues. I am the chair of CCMS. It is a bigger body than this, and it meets every two months, but it is one of the healthiest and most vibrant bodies that I sit on, because it comprises teachers, parents, administrators and trustees. I know that the support body is not going to be CCMS, but were there a forum in which those different perspectives could be brought together and in which important decisions could be made and carried forward, that would also help to make sure that the ethos of our schools and their standards was maintained.
1613. We are also concerned that area planning is going to be a regular feature. We are not going to plan our own schools in isolation. When schools need to be refurbished, we will want a new school, but we will want to consult with other schools in the area. We will need a mechanism to do that. If the sectoral support body helps us to do that, it helps us to look after our own affairs, and in a way that takes account of the wider needs of that community.
1614. The final aspect, over which this Committee has no control, is to do with the interests and commitment of parents. As long as there are Catholic parents who want Catholic education, Catholic schools will supply that need. Should a time come when Catholic parents simply become indifferent either to their faith or to the elements of culture that are important to them, why would there be Catholic schools other than as places for Catholic children to go to, which is not a reason for Catholic education?
1615. Bishop Donal has made the point very well over the years that Catholic education is not about education for Catholic children. That would result in a kind of canonisation or Balkanisation of education. Catholic education is sustainable and will contribute to the people who use it and to wider society only if parents value faith and an institution that will help them to keep that faith alive for their children.
1616. That is not within your control, but it should probably go on the record as the key element of the whole operation.

- Only time will tell, in future generations, whether that is maintained.
1617. **Mr Rogers:** Who do you believe should define “ethos” in our schools?
1618. **Mr J Clarke:** This goes back to the point that Tim made about the importance of clauses 3 and 34, which are to do with the schemes of employment and, in particular, the schemes of management. All sectors and interests, not just the Catholic sector, should be able to set out what the school is about so that governors, teachers and other staff, and particularly the parents who send their children to the school, know what that school stands for.
1619. That is why we have stressed the importance of getting the rights of trustees to be the submitting authority for the schemes of management and the schemes of employment into the Bill. It is why we believe that there is a need for a definition of what it is that they stand for. They stand for Catholic education. Therefore, there needs to be a definition of “Catholic school” in the Bill.
1620. We believe that, with some minor amendments, those things can be guaranteed in the Bill. Then, we believe, the concept of “ethos”, not just for the Catholic sector but for all, can be guaranteed into the future.
1621. **Bishop McKeown:** Going back to the early 1990s, Harvard published a work by Bryk, Lee and Holland on what made for effective schools in the service of the common good. They used the phrase that there should be access to “inspirational ideology”. Ethos is there to inspire people, to fire them and to energise them. Therefore, I think that every school will have its own ethos in some senses, but if we want to maintain some cohesiveness in the service of everyone, those who draw up a scheme of management with the definition of the vision for the school are the ones who can provide that “inspirational ideology”, which researchers say is vital for a quality outcome. How can you inspire people? How can you energise them to go the extra mile? It is doable.
- Our schools need it. We have found a way of doing that. We ask you to ensure that we can continue to do that and that what we have learnt from our experience can be made accessible to everybody across all the sectors.
1622. **Professor Dynan:** Of necessity, a lot of discussion today has been about the nuts and bolts of the ESA legislation. As we represent the Catholic sector, you have, necessarily, drawn attention to issues that are perhaps problematic to us. It has been said by others but bears repeating that somebody asked what use ESA is anyway. I think that ESA, if we get it right, is potentially of enormous benefit to the whole education community in Northern Ireland. You would then have a policymaking forum and a service forum in ESA that would bring together, in a way that I do not believe has ever been done, all the school interests in the Province. They would be brought together in a way that they would be bound by the direction in which ESA must go. All the issues that we are kicking around here about sharing education will, I believe, become central to the discussions on ESA. I hope that ESA is not bogged down in purely administrative work. That is for other people to do. We should perhaps have some hope for the future that this is potentially a very creative Bill and one that, if we get it right, will really help to move the whole community forward. I just wanted to say that, despite our reservations about aspects of the Bill.
1623. **Mr Rogers:** I have one more question. I welcome the emphasis on sound management, leadership and governance and the “accountable autonomy” that we talk about. The grammar schools are very much into the voluntary principle. Do you believe that that principle should be enshrined in the legislation?
1624. **Mr J Clarke:** We need a definition of what the voluntary principle means. We see “accountable autonomy” as being the taking of elements of the voluntary principle and making them available to all schools that wish to have them, but making them available, as I said, first, by

- desire within a board of governors and, secondly, by a commitment showing that they can handle that greater devolved autonomy. We do not want a more fragmented independent sector. We want schools to play an important role in communities and to be interdependent. The future requirements of our education system will be such that in many cases, as I think has been shown by the experiences of the post-primary area-learning communities, we cannot provide in one institution everything that young people want from an education system. Therefore, we think that the concept of curricular sharing is an element of accountable autonomy, as indeed might be the sharing of professional development and expertise.
1625. There are financial dimensions to that as well. One of the characteristics of the voluntary school is that it lives within budget. Would that we could get all schools to live within budget. Therefore, there are encouragements to do that, but we are into an inclusive education system.
1626. As Bishop Donal has said many times, Catholic education is not just education for Catholics. We believe that parental choice means that parents have the right to choose any school, and there should be no impediments to accessing that school. In that context, the school ought to have a commitment to its community. The broader services that can be provided by a community, particularly in areas of social disadvantage, to ensure that the education of young people can be promoted would be enhanced. We achieve that by saying to governors that we will give them the tools to do the job as they think it needs to be done, provided that they show us that they have the capability to do it. I believe that that would encourage more volunteers because they would be doing things that are direct contributions to their community.
1627. Bishop McKeown: First, we want to encourage the voluntary principle in all cases, but since all public schools are publicly funded, they have to be accountable to the greater whole rather than just to their constituency. Secondly, we have to ensure that big schools can do things in the way in which they want to, and we have to remember that a vast percentage of our schools are small schools, which simply do not have the capacity to go off and be self-governing. Therefore, how do we get the tightness and the looseness that enables creativity yet protects the small?
1628. **The Chairperson:** I am very conscious of time because there is another group coming in to give evidence, and you will be aware that that is an important issue to pay attention to.
1629. **Mrs Dobson:** Thank you for your very comprehensive answers. Much of what I wanted to ask has been covered, but I will touch again on ethos. Father Bartlett and others spoke in great detail about ethos, and I get the impression that you are not content that there are enough protections in the Bill to ensure that the ethos of the schools will be retained when the new school governors are appointed.
1630. I will take you back to issues that Sean mostly covered. In your submission, you argue that the Bill should include a requirement for boards of governors to ensure the continued viability of Catholic schools. You also argue that sectoral bodies should take precedence over boards in determining new governor appointments — your wish list, so to speak. Have you received any feedback from the Department on those issues?
1631. **Mr J Clarke:** Not really. The point that we are making about clause 39 is that some schools will be the submitting authority. Therefore, the board of governors will be the submitting authority for the scheme of management and scheme of employment. In the case of the Catholic sector, there is a sectoral body, which will be the submitting authority. Therefore, the sectoral body should be consulted. Otherwise, there is confusion as to who has the priority. The existing governors on the board may be renominating themselves or the support body may say, “Here are the trustee

- representatives that we believe would be advantageous to the school.”
1632. There are different splitting authorities, and it is the way in which the Bill is drafted. We are simply making the point that that needs to be clarified in the Bill. Where the boards of governors are the submitting authority, they are the people who ought to be consulted, but where there is a sectoral body, we believe that it should be consulted and should have the priority view.
1633. **Mrs Dobson:** Feedback from the Department?
1634. **Mr J Clarke:** No, we have made the point generally to the Department, but we have not had any detailed discussion on it.
1635. **Bishop McKeown:** An example of where we are coming from is that there would be a sectoral body, but the seven schools in the Edmund Rice Schools Trust would have their own particular vision of or take on the ethos on the scheme of management, so we would try to hold together a range of different approaches. However, I think that they would want all seven schools in that trust to have a comparable vision, rather than every school going off nominally with a particular name but just doing its own thing. That sense of cohesiveness adds value, but we are looking to try to maximise that and yet allow people to be independent.
1636. **Mrs Dobson:** Do you believe that your influence with schools would increase or decrease if the Bill were passed into law in its present form?
1637. **Bishop McKeown:** We have been arguing for a balance to ensure that the trustees can play their distinctive role.
1638. **Mrs Dobson:** So you think it would decrease?
1639. **Mr J Clarke:** No. What Father Tim was trying to convey was that, as currently drafted, clauses 33 and 34 are clumsy and lack clarity. For instance, the heads of agreement, which were never intended to be a legislative document, are written into the clauses. We do not believe that there is a place for the heads of agreement in the clauses, but we need clarity on the role of the submitting authority and the level of consultation to determine outcomes for a scheme of management and a scheme of employment. What we are looking for is clarity in the Bill. If that clarity is there, we are content that it will deliver for us the assurances on ethos. Of course, that clarity also requires us to have a definition of a Catholic school. That is why we have focused on clause 63 and the fact that we believe that the trustees or the bishops, not the Department or the Minister of Education, need to have a role in determining what a Catholic school is.
1640. **Mr Lunn:** I have heard a lot today that actually encourages me. On balance, I think that I am hearing that you are prepared to work with ESA. You certainly said that, if we have manage it properly, you think that it has the potential to do some real good. I have been keeping count, Bishop John. I think that, on balance, you have now indicated that you are prepared to put up with the schemes of employment and the management scenario.
1641. On the back of Jo-Anne’s question on clause 39(2), is it your intention that the sectoral body would actually have the final say in the appointment of governors?
1642. **Bishop McKeown:** The trustees of each individual school would have the final say because they are nominating the governors.
1643. **Mr J Clarke:** That would happen with trustee governors only. That is largely the current situation.
1644. **Mr Lunn:** OK. All my points will be brief, Chairman. You made various references to the heads of agreement. Frankly, I agree with you. It is a pity that we have to incorporate a reference to a political agreement in a legal Bill that will become an Act of Parliament. However, I cannot help thinking that if there were no heads of agreement, there would be

no ESA. Maybe you would agree with me on that. The heads of agreement make the previous debacle much less likely. So, I think that, frankly, we are stuck with them. Do you agree that there is no point trying to remove from the Bill references to the heads of agreement?

1645. **Mr J Clarke:** On the contrary. Our view is that the heads of agreement were there to give guidance to the Bill, not to be the Bill. I do not think that they were written to be the Bill. This matter is for the drafters. However, it seems to us to be a rather clumsy arrangement for a Bill to be dictated by something that is external to it and is simply a bolt-on to it. If there is confusion in the heads of agreement, and there appears to be a degree of confusion with this in the sense that people are interpreting parts of it differently, it actually works against the principle of good legislation. So, we need legislation that is clear.
1646. **Mr Lunn:** Yes. The heads of agreement are in the fine tradition of all agreements in this country. *[Laughter.]* They are phrased in such a way that means that they can mean all things to all men and are capable of having any number of interpretations. That is how we manage to get through somehow and end up with another impasse, following which, we have another agreement. I do not think that we can remove the references; they are there to stay.
1647. I was very encouraged, Bishop John, by your reference to area-based planning and by the fact that you do not intend to plan your own estate in isolation. I have crossed swords with Gerry previously about the historical fact that you actually appear to have been quite determined to plan your estate in isolation. I do not know to whom I am addressing this point, but will there be a change of heart? Do you think that it has always been that way?
1648. **Bishop McAreavey:** I will let Gerry answer for himself. We will want schools, and we will want new schools when they become necessary. Certainly, I think that, where there are new communities, our preference will be

to have a Catholic school so that parents who want to choose a Catholic education for their children will be able to do so. So, I start from that position, Trevor. However, obviously, we are in a time of partnership. We are also in a time of austerity, which does not look as though it will change that quickly. So, there are resource issues. We know that there will have to be discussions on some of those issues. We think that our sectoral body will be able to take up some of that responsibility and do that negotiating. Gerry does that on the ground and knows more about it than I do.

1649. **Mr Lundy:** We take an approach to school planning, and even to area planning, that we think is the correct approach. You have to start off by looking at your own house. It would be completely inappropriate for any sector to take on board another sector's planning responsibilities. The key difficulty that we have had in the education landscape in Northern Ireland until relatively recently is that, when each sector has done that, there has not been any formal mechanism whereby they could share their thoughts and then engage in what I would call a reconciliation process. The latest and current area-planning process has begun to facilitate that, and through the post-primary process, an important number — although I would not call it a significant number — of our original proposals have been modified and adjusted to meet the needs of other communities and other sectors that have suggested and proposed changes. The bishop referred to the area planning. That cannot be done in isolation, and there needs to be a forum through which that reconciliation process can be handled and can progress.
1650. Equally, at the start of the area-planning process for our primary schools, which is ongoing, CCMS met all our primary schools in March and set out what we were going to do initially. We invited all our schools to respond to the area-planning process and to outline where they felt that there was a cross-sectoral

- or cross-community opportunity either to retain some form of provision for them or to assist other sectors. We see that as a bottom-up approach, and that has borne through for the process. Yes, we are very focused on initial planning, but we absolutely see that a step has hitherto been missing in which real reconciliation of competing proposals or opportunities can be discussed and brought forward to the next stage.
1651. **Mr Lunn:** I think that you said that the current process has borne fruit, so are you saying that, as a result, there may be opportunities for the amalgamation of controlled and Catholic maintained primaries?
1652. **Bishop McKeown:** Can I answer that with a point that I wanted to make? It is important that your Bill does not allow just for the current provision of schools. There is going to be an increasing demand in the future for avowedly secular schools in Northern Ireland, access to which is currently not available. We certainly want the Bill to at least say nothing that would prevent a joint-faith school in the future, because I think that, in the future, many will say that the choice is between either a faith-based education or a secular education. So, rather than just asking whether we should amalgamate the controlled and the maintained, we should ask whether the law will not exclude the possibility of a joint-faith school with different sets of trustees. All of us who are active in the Churches, which are, let us be honest, minority practices in the Northern Ireland population —
1653. **Mr Lundy:** Proposals for the primary sector, limited though they may be, are emerging, and people want a joint-faith solution. They do not want an integrated school but a shared school that is controlled and maintained to retain provision in the area for the whole community. So, as Bishop Donal indicated, the difficulty is that there is only one convoluted, if that is the correct term, route to use to establish such a school. Some such proposals have emerged and are being proactively explored, Trevor.
1654. **Mr Lunn:** I am glad to hear it. I am not just talking about joint-faith schools; it is the same thing to me. I am really trying to tease out your willingness to perhaps give up some control in particular sectors for the greater good of the area. If the best solution is the amalgamation of two schools that are not from the same sector, are you willing to accommodate that?
1655. **Mr J Clarke:** Much of that has to come from the community itself, because, if either the controlled or the maintained sector try to promote this —
1656. **Mr Lunn:** Wherever it comes from.
1657. **Mr J Clarke:** Yes, wherever it comes from, and we will facilitate that where it meets young people's educational needs. We have focused quite a lot today on religious integration. There is also a social integration in Northern Ireland that is very much missing from the conversation, and we need to keep that on board. We also need to recognise that we have polarised communities in Northern Ireland — quite significant groups of people live in communities that are single religion and perhaps single culture and single class. The concept of sharing is going to be a slow, bottom-up process. However, I think that the commitment that we can give you today is that we are prepared to play a very fulsome role in that promotion.
1658. **Mr Lunn:** That is fine, Chairman. I got through that discussion without using the word "integrated" once. *[Laughter.]*
1659. **The Chairperson:** Not to be confrontational, which I never would be, but if you take Jim's analysis about the community, there are some contradictions in how it operates. For example, when a community in Dungiven wanted to have a home for its Irish-medium school, the only thing that it could find that was welcome and open to it was the controlled sector.
1660. **Mr J Clarke:** I am not going to get into —
1661. **The Chairperson:** You know what I mean.

1662. **Mr J Clarke:** Actually, —
1663. **The Chairperson:** It is not just as simple as saying that if the community wants it, we will provide it.
1664. **Mr J Clarke:** I do not think that we should get into the detail of that; I will let Gerry deal with it. However, I will make one general point, which is that we must have sustainable schools. That, essentially, is the point that Trevor is making.
1665. **Mr Lundy:** I take your point about Dungiven. However, with respect, to facilitate the Irish-medium community's desire to have a stand-alone school, CCMS proactively managed and facilitated the closure of our existing model, which the community no longer wished to have. So, we supported the delivery of that by closing a very successful provision that had quality outcomes for our young people but that no longer met the community's needs, which it expressed. I think that that showed the flexibility of our sector in particular. It was not about our saying that they were our pupils and we were going to keep them and our saying that it did not matter what the community wanted. We brought it forward, and, as you are aware, it was a very complex arrangement.
1666. **The Chairperson:** Danny, you can ask just one final question. We have really strayed beyond our time.
1667. **Mr Kinahan:** My question relates to consultation. During all this, and from the answers that I have had, the only consultation that seemed to happen was when you talked to your schools, so I congratulate you on that. Some did reply to me before you stopped them. I am concerned, and we need to put somewhere in the system a mechanism for talking to parents and one for talking to governors. If you look at our education system, you will see that such a mechanism just does not exist, although you have it more than others. Will you support trying to get some system, possibly through the Bill, that gathers people together that means that it is about not just ESA and the controlled bodies but that teachers are actually talked to? Again, that may not necessarily happen just through you. Consultation really seems to be missing throughout the system.
1668. **Bishop McKeown:** Schools need communities, and communities need schools. It is a matter of how we get that balance right so that people feel that they are involved in their children's education. I agree with you.
1669. **The Chairperson:** Thank you very much for your time. I extend to Bishop McAreavey our best wishes for his sabbatical. We have conveyed our best wishes to you in the past. Thank you for the time that you have been with us, and we look forward to hearing from you. I am glad that you engaged, as Patrick Murphy said in his article, in this exercise of "navel-gazing" with the Education Committee. *[Laughter.]*
1670. **Bishop McKeown:** I wish you every success with this very important task.

9 January 2013

Members present for all or part of the proceedings:

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

Witnesses:

Ms Helen Duffy *Western Education and
 Library Board*
 Rev Robert Herron
 Mr Barry Mulholland

1671. **The Chairperson:** I welcome Mr Barry Mulholland, the chief executive of the Western Education and Library Board (WELB); Rev Robert Herron, the chair of the Western Education and Library Board; and Helen Duffy, the head of human resources jointly at the Western Education and Library Board and the Southern Education and Library Board. Barry, we are pleased to see you back. You were in our thoughts and prayers during your illness, and we are glad that you are making a phased return to work. We wish you well in that role. I think that it would also be right for us to refer to the education and library boards' organisational difficulties, which are a consequence of delays in the establishment of ESA. I think that it would also be fair to say that those difficulties are a consequence of the imposition of the vacancy control policy, which has been in place since 2006, that has created particular difficulties. The Committee is conscious of the pressures on board staff, and it commends them for their efforts. It intends to conclude work on the Bill as quickly as possible. However, I think that it is important that members take the time to give very careful and serious consideration to the Bill, as it includes a number of very important and possibly contentious changes to education.

1672. Thank you for your submission. Some of the issues raised are very interesting and thought-provoking. I ask Rev Herron, or whoever will take the lead, to do so, make the presentation, and we will then ask questions. I apologise again for running over the time, but I think that you understand the situation.

1673. **Rev Robert Herron (Western Education and Library Board):** On behalf of the Western Education and Library Board, I thank you, Chairman and members of the Committee. I thank you for your invitation to the board to present oral evidence on the basis of our submission to the Bill. Our paper represents the views of board members, their having consulted with staff throughout the organisation.

1674. You can see from our submission that WELB is supportive of educational reform and of the overall direction of the Bill in establishing ESA. Anything that we say today is aimed at being supportive of the process and, indeed, at encouraging progress towards ESA's establishment.

1675. WELB's main objective is to support learning. We do not see ourselves as a controlling body but as a service organisation. We take pride in supporting pupils, parents, teachers, staff in schools and youth organisations in a wide range of activities. On a day-to-day basis, our work involves supporting individuals and groups of people through departmental and board policies, as well as agreed processes. We are also mindful of the legislative, political and social context.

1676. We have approached the Bill from the perspective of a service-delivery organisation with a focus on the operational aspects of the proposed legislation. We are particularly interested in the Bill's pragmatic and operational aspects. Some of my colleagues may refer to me as a "wicked pragmatist",

- but that is the way that we tend to work. We are here to make things work.
1677. Our experience is in corporate governance and accountability, employment issues, financial management, service delivery and providing educational support to schools. We always see ourselves as learners in what we do, and sometimes that means learning from our mistakes.
1678. We are happy to take questions. Barry, our chief executive, and Helen, our head of human resources — who is head of human resources across the Western and the Southern Boards, as we work in partnership with the Southern Board — are the experts in operational matters. I said to them that any questions that they feel should be taken by a board member should be deflected in my direction.
1679. **The Chairperson:** Thank you very much. Do you want to comment, Barry and Helen, or are you happy just to go into questions?
1680. **Mr Barry Mulholland (Western Education and Library Board):** We are happy to take questions.
1681. **The Chairperson:** One of the reasons why the Committee felt it important that you attend is that the Western Board is the only board that provided a written submission. The submissions that we have heard to date have, by and large, come from people who have either interests or an involvement in education. However, from the board's perspective, it is has been tasked with the delivery of services. You commented, Robert, that yours is a service organisation. It was very important for us to get some sense of what we have had, what is being proposed and how you feel about what we will end up with, should this be implemented, and whether it will be as good as or better than what we have. We want to get some sense of that on a pragmatic or practical basis. That is why we felt that it was important to have this discussion with you.
1682. Having read your paper, Robert, I think that, when you condense things down,
- the single employing authority is one of the stand-out issues. It runs the risk of becoming either a misnomer, an Achilles heel or a working, practical solution. However, what is created depends on the way that it is implemented. That is the point that I want to tease out with you,
1683. You say in your submission that if schools are allowed the discretion to develop their employment or management schemes, that would lead to significant variations in employment and management procedures. In a sense, that contradicts what the title "single employing authority" would imply. I get the sense that there are organisations that believe that it is quite right that there is a single paymaster general, but beyond that point, they want the authority and ability to do whatever else they want to do, albeit under the banner of a single employing authority.
1684. As a practitioner and as someone who is at the coalface of all this, Helen, what do you see as the operational difficulties if it is not done properly?
1685. **Ms Helen Duffy (Western Education and Library Board):** I think that the key thing is the potential number of differing employment schemes that are enshrined in the draft legislation. The critical element will be to ensure that those schemes are approved and that they meet statutory legislative requirements.
1686. Furthermore, it is very important to ensure that, in the approval and adoption process, once the schemes have been ratified and are adopted by the board of governors or the submitting authorities, there is absolute adherence to that scheme in its outworkings. That can be ably assisted through training and support. I believe that that is the critical element; it is not the schemes per se. The boards and other organisations have very important schemes that deal with employment issues. It is important to have the content of the scheme harmonised with the board of governors as the people with responsibility for its implementation, but just as important

- is the support for and understanding of that scheme and what it means for the responsibilities that fall to a school.
1687. The approval of a scheme and its content is important to ensure that it meets all the requisite legislative requirements and statutory responsibilities. The other dimension is to ensure that, once approved and adopted, the scheme is followed in its entirety and adhered to in a way that ensures that it is done correctly. That is the issue.
1688. **The Chairperson:** That would then lead logically to the issue that you also raised about the significant resource constraint that may occur. If school A has a scheme of management that requires a, b and c, but school B has a scheme of management that requires a, b, c, d and e, that could become a conflict and could lead to difficulty. Is that what is being said? How different is that situation to current practice? That is the point that I am trying to tease out in my own mind, if this were to be implemented as the Bill stands.
1689. **Mr Mulholland:** Members expressed a number of concerns about the Bill, and they seek clarification about them. The first concerns centre on whether ESA is a single employer. As has been referred to, the heads of agreement and the Bill seem contradictory. Point 10 of the heads of agreement indicates that, where it is already the case, boards of governors can continue to employ their own staff, but the Bill states that ESA will be a single employer. So, clarity is required on that, because if we are talking about a single employer, let us have a single employer. However, if it is going to be something different, we and the education system need to know about that as soon as possible. That is the first issue.
1690. The second issue is about how to get consistency in the system when you are looking at employment practices. That applies to all the different sectors and their capacity to submit a variety of schemes, albeit that those schemes must meet the required statutory duties.
1691. The third issue concerns the logistics of being able to ensure that the schemes are adhered to and that there is a level of consistency. That is because, at the end of the day, ESA will have to carry all liabilities for all schemes that it approves. Some clarification is required on what happens when there is a difference between a scheme as submitted and ESA's perception of that scheme. If it is required to go to tribunal, what happens in the interim? The Bill says that the existing scheme will continue until the tribunal rules on the new revised scheme. An interesting anomaly with that might be that what is perceived to be the revised scheme that is submitted to ESA and drawn into question may actually be the existing scheme of management or employment that is already operating in the voluntary sector or the maintained sector. So, will that continue, even though it has been called into question and will be subject to a tribunal? So, the Bill needs to clarify that.
1692. **The Chairperson:** I hope that this is not an unfair question, but, in your opinion, is it possible to have a single employing authority — what I am becoming more inclined to call a paymaster general — with variations on delivery, which was dressed up in the previous Bill by the buzz phrase of “localised accountable autonomy”? Are those two things deliverable or incompatible?
1693. **Rev Robert Herron:** I will try to address that as a layperson, and these folk will probably come in and contradict me. At present, I am trying to think this through in my own mind. It seems to me that in the system at the minute we have a number of employers, and even some of those whom we regard as our staff, such as ancillary and various others, work in Catholic maintained schools. That at times raises issues with different employers where management is concerned. Let us say that all works well when relationships are working, but how can issues be resolved when relationships are not? So, we then see some kind of agreements, including service-level agreements or whatever.

I am aware that matters in that kind of territory sometimes become issues in the boards.

1694. We would also look at the controlled schools under the board. If you asked a controlled school's board of governors for its scheme of employment, it would probably refer you to the education and library board. That is because everybody accepts the same scheme of employment with which the governors are probably not familiar. They would know the operational aspects of it, but they would not refer to the document on a day-to-day basis. Within that, there would be quite a lot of autonomy in the various schools that have adopted the same scheme. Would that be a fair summary?
1695. **Ms Duffy:** It is not the content of the scheme per se, because the content is usually totally fine. Everything is boxed off legislatively and statutorily. It is the implementation of the schemes. Even in a board situation where there is one harmonised scheme, it is the correct outworkings of that scheme at local board of governor level that are absolutely critical. That is where the training and support that will be provided atypically in a board situation, to both controlled and maintained schools, is very important. I see that becoming as or more important in the situation where you have a scheme but there is some variation to that scheme as approved. Approval is important, and, once approved, it is about the adherence to the approved schemes and the outworking of it, ably assisted by some support to ensure that the governors of the school understand the implications of their scheme in how it is worked through. That is the same scenario in a board. As the Chairman said, with one scheme, there is the probability that that may not be fully followed through in each and every instance. That is when issues may arise.
1696. **The Chairperson:** That is one of the concerns. We have looked at and gone over this in the past number of weeks. It is all very fine to have a piece of legislation. You can pass a law, but it

is about what happens when it comes to the practical outworkings of that and how it actually operates. For example, if there is an approved scheme of management and a geography teacher in school A is on point 6 of a seven-point pay scale, but a geography teacher in another school is on point 3 and hears about it, that teacher could say, "Hold on, I have done the same time and have the same number of children. Am I being discriminated against here?" You then open up the huge area of inequality and industrial relations. That is open to anybody as it stands, but how much more problematic is it? In the case of the teacher in school A, the school may be their employer, but, as it stands, the teacher in the other school may be employed by a board. So, there are two different employers. What would happen if they were to come under one employer? It is those practical points. That is only one example, but it is a very common one that may be prevalent.

1697. **Ms Duffy:** I would have thought that the collective agreement and the negotiating machinery that prevails for teachers through the teachers' negotiating committee and for non-teaching staff would still be in operation, and any collective agreements that would pertain to the pay and terms and conditions of staff would have to prevail. Therefore, in some way, that would militate against that type of situation happening. I do not think that this can be looked at in isolation. The employment schemes and the schemes of management, etc, must take cognisance, as the draft legislation identifies, of the various collective agreements and the negotiating —
1698. **The Chairperson:** The Jordanstown agreement, for example —
1699. **Ms Duffy:** Correct.
1700. **The Chairperson:** — which we have confirmed here is not affected.
1701. **Ms Duffy:** In my view, it would be difficult to have a situation whereby that is almost put to the wayside and a unilateral approach is adopted.

1702. **Mr Lunn:** I want to go back to the point about the heads of agreement in 10(c). Here we go again with this heads of agreement thing.
1703. **The Chairperson:** Politicians have terrible things to deal with.
1704. **Mr Lunn:** Having tried to reassure boards of governors in schools and various bodies that there is nothing to fear in the schemes of employment sections of the Bill and that the school can make its own employment scheme, which has to be accepted by ESA if it is not in contravention of statute, and that ESA has to accept the decisions made under that scheme of employment, unless they are made outside of the scheme of employment, suddenly you find the sneaky wee reference in 10(c) about the boards of governors continuing to employ and dismiss members of staff. That is contradictory to what it says in the Bill. Do you have any view on why it should say in 10(c) “Where it is already the case”? Why would that be there except that politicians dreamed it up?
1705. **Mr Mulholland:** It is already the case for one sector; the voluntary grammar sector. It already employs, dismisses and pays its own staff.
1706. **Mr Lunn:** Since there is no change to that situation, what you are doing is extending that right to all other schools that want to have it.
1707. **Mr Mulholland:** No; we are not. There is a contradiction between the draft legislation and the heads of agreement. The draft legislation says that ESA will be the single employer of all staff.
1708. **Mr Lunn:** It also says that that responsibility is delegated absolutely to a board of governors if it wants it under the make-up of the schemes of employment. That is the point, is it not?
1709. **Mr Mulholland:** If that is the case, you could have a plethora of employers throughout Northern Ireland.
1710. **Mr Lunn:** You will have one employer. You may have a plethora of slightly differing schemes of employment. We had that discussion with the Catholic authorities a while ago.
1711. **Mr Mulholland:** The wording of 10(c) is “to employ and dismiss” their own staff.
1712. **Mr Lunn:** If it said “to appoint and dismiss” would that make —
1713. **Mr Mulholland:** That would be different and I would agree totally with the point that you are making. However, it does not say that. It says “employ”. That is the contradiction. It is the word “employ”. That is a matter for politicians.
1714. **The Chairperson:** You have enough to worry about.
1715. **Mr Lunn:** What is your solution to that? It seems to me as though — dare I say it — the wording of the heads of agreement might need to be changed, rather than the wording of the Bill.
1716. **Mr Mulholland:** I would not dare to comment. *[Laughter.]* I believe that that is a matter for the politicians.
1717. **Mr Lunn:** Turn off the Hansard recording and let us hear your opinion. That is fine, Chairman. Thank you very much.
1718. **The Chairperson:** OK. Danny, perhaps we will come back to that point. Helen, do you want to comment on that?
1719. **Ms Duffy:** I will make a brief comment. Clause 9 in the draft legislation is pertinent to the particular scheme that is approved for a particular school. What it appears to say is that if ESA considers that a board of governors has made a decision that is not in accordance with, let us say, its — by implication — approved employment scheme, ESA may require the board of governors to reconsider that decision. So, that is why I say that not only is the content of the scheme very important in ensuring that everything is covered, but implementation of it in its entirety and adherence to its contents. It would also appear that, in the draft legislation, there is almost what I would call a layer of quality-assurance checking to ensure that, in the undertaking of its scheme,

- the board of governors has done right by its own scheme, and ESA is the body to ensure that that is the case. I suggest that maybe cognisance needs to be taken of that particular clause in conjunction with the debate that has taken place. How that works, I do not know.
1720. **Mr Lunn:** I am grateful to you, Helen. Who is the final arbiter? Does it go to the tribunal at the request of the board of governors?
1721. **Ms Duffy:** I do not know who the final arbiter is. I would imagine that —
1722. **Mr Mulholland:** On that point, ESA would make the final decision.
1723. **Ms Duffy:** It seems to be ESA.
1724. **Mr Mulholland:** With regard to the content of the scheme in comparison with an added scheme, the arbiter could be a tribunal.
1725. **Mr Lunn:** Chairman, I am going to spend the next 10 minutes looking for that.
1726. **Ms Duffy:** It needs clarification.
1727. **The Chairperson:** Chris will clarify that.
1728. **Mr Kinahan:** Following on from that, my concern has always been that if something cannot be agreed, you end up with a tribunal. Do we need to put an arbitration system in the Bill? Rather than get stuck in legal issues and interpretations, should we put something else in the Bill that allows for a little bit more flexibility and time?
1729. **Rev Robert Herron:** I thought that that was already there. I may have misread it.
1730. **Mr Kinahan:** I have not picked up on its being there.
1731. **Rev Robert Herron:** I thought that there was an informal process before we could find ourselves in a formal process.
1732. **Mr Kinahan:** I will get clarity on that, thank you.
1733. Our brief says that you are looking for greater financial autonomy in schools, yet I can find very few ways that the Bill guarantees that schools have more financial autonomy. Was it 59% or 61%? We want to see more coming down, but there is no mechanism in the Bill. Do you see any way of changing that?
1734. **Mr Mulholland:** Increasing the proportion of money that goes to schools? The debate on the money that is retained in education and library boards as opposed to the money that goes directly out to schools has gone on for years. When you engage with schools on that, they get an understanding that the money that is held by the boards covers areas such as transport, special education, special schools, school meals, etc. Schools do not really want the responsibility of organising their own school transport systems. When you look at what is held by boards for pure administration, you see that it is a very small percentage of the money that is allocated through the Department of Education. So, schools see that the percentage of money that is held back by boards is not a straightforward issue. Some schools would say that they still want more money, but they do not want the responsibility for running their own school meals, transport systems, maintenance systems, capital systems, etc.
1735. **Rev Robert Herron:** Some of it is highly complex operationally, even in the example of school meals. One of our issues is the variation in school holidays. Some schools could have a kitchen open to service other schools on a day when the main school with the school kitchen is closed. From an operational point of view, the way in which it has evolved leads to costs.
1736. **Mr Mulholland:** There are ways of saving money in transport if the organisation, be it boards or ESA, has the capacity to tell primary schools and post-primary schools what their starting time is and to put a gap between the two. You could reduce significantly the number of buses because you would be able to do dual runs, etc, but under the local management of schools, we do not have the power to say that to schools. In our

- board, some schools co-operate on their starting times to facilitate that.
1737. **Mr Kinahan:** Very interesting.
1738. **Rev Robert Herron:** I know that schools will always want more money, but there is a tremendous variation in the amount of money going to schools per pupil. It is maybe quite a controversial example, but I live — I will not mention the name of any school — on the edge of a town, and if I come out of my driveway and turn right to the nearest primary school, my children could be educated in that school, which is about a mile and a half away, for £2,000 a year. If I turn left and go a mile out into the rural community, it could cost maybe £4,000 or £4,500 per pupil. So, there is a tremendous variation in the amount of money per pupil going to schools.
1739. **Mr Hazzard:** Thanks for the presentation. You are not the only ones to mention the issue of expanding and increasing the responsibilities of boards of governors. What do you feel is the necessary solution? What are your ideas to accommodate the new roles?
1740. **Mr Mulholland:** Without doubt, we need to ensure that there is a governor support system in ESA that has the capacity to meet the needs in the schools. I know that that is actively being looked at.
1741. **Rev Robert Herron:** That is a major issue at present. The support that we can give to schools has been reduced considerably over recent years, not only at governance level with school governors but support in the curriculum and the whole Curriculum Advisory and Support Service system. That is a very live issue, and, at present, we have to target support. Schools are categorised as a result of inspections and Closing the Gap, etc. We have very targeted support for schools at the minute, and we need to focus on that for the future.
1742. **Mr Rogers:** You are very welcome. Thank you for your presentation. You are one of the few people to mention the Youth Service in your presentation. How do you envisage the concerns of the Youth Service being channelled through to the ESA board, etc, since it has no representation? To me, the Youth Service plays a big part in the wider educational picture as well.
1743. **Mr Mulholland:** The Youth Service is a sector within education that is close to my heart, as I originally came through the Youth Service. I was the head of the Youth Service in Belfast before moving into the senior management team in Belfast. Therefore, the Youth Service has a very special significance to me.
1744. I found it very encouraging that the members on the Western Education and Library Board — I know that this is reflected in other boards — very much welcomed the fact that the Youth Service is part of education, remains part of education and has now been included in the Education and Training Inspectorate's responsibility as regards inspections. The Youth Service is part of the children and young people's services in ESA, and one would expect that that would be a regional service that would be locally delivered across Northern Ireland.
1745. In order to make sure that the youth-work agenda is high on the radar of ESA's management board, there should be some sort of committee structure that would be able to relay through to the ESA board the needs of the Youth Service and the valuable work that it carries out. Other than that, I do not know what plans there are in ESA for representation at ESA board level or for some sort of committee structure. However, I expect that it has to have that.
1746. **Mr Rogers:** Do you find that other educational sector groups are looking for representation on the ESA board, and do you think that it would be advantageous for the Youth Service to have a representative on the board?
1747. **Mr Mulholland:** There is no doubt that there would be advantages in that, but that is a matter for the legislators and the Committee as regards the numbers that will go on to the ESA board. I know that it has the potential to grow and

- that it has already grown from what was originally envisaged. Without doubt, there would be an advantage, but a decision would have to be made by yourselves and the Department.
1748. **Miss M McIlveen:** Thank you for your paper and your presentation. In your paper, you mentioned that there are concerns that there is nothing in the Bill that legislates for categorisation of the amalgamation of different types of schools or other solutions for the establishment of federations or clusters.
1749. Can you give the Committee your definition of shared education and some of the experiences that you have had locally?
1750. **Rev Robert Herron:** I will say a few things, and maybe others will say something more about it. The area-learning communities would obviously be a major area, with regard to the curriculum, in sharing, and they are quite strong in the Western Board and have been well supported — we hope. There is the Fermanagh education project, which focuses mainly on shared education and on schools in Fermanagh. I chair the Western Board's area planning, which we call the Putting Pupils First group. We have representation from various sectors around the table, and that has been a very useful and enlightening experience. I listened to the previous contribution today, and those meetings have been and continue to be valuable. We have different sectors sharing their hopes and aspirations, and yet how we move forward is extremely difficult. Rightly, every sector wants to promote its own sector. Yet the situation is not static because, at this time, we are dealing with area planning.
1751. One of the first things I did as chair of the area planning group was to ask our board to produce a map of all the post-primary schools in the Western Board area, covering the five council areas. It is stating the obvious, but most of the post-primary schools are in the major towns. The majority of schools that are not in the major towns are struggling.
- They are the ones that are suffering the main decline in pupil numbers. What they have in common is that most of them are non-selective schools. So, we are going through an exercise. From the board's point of view, those are also the schools that are getting into financial difficulties.
1752. What is the future regarding schools in the rural community? I think that it will be very difficult to sustain schools in the rural community at post-primary level, even in the west. That is due to the choices that are there and the legislation. One of the issues that we face is whether we should create another sector. I listened to Trevor's question earlier. If we create another sector, will it have the same transport rights as others and what are the implications of that? Other schools may have to be bypassed and transport provided by the board or by ESA for that particular sector. The complexity of the whole situation just grows.
1753. I sit on the board as a transferor. One of the issues that we try to wrestle with is the difficulty due to the fact that Catholic trustee representation is based on ownership, whereas the transferor representation is based not on the fact that they own but on legislation. There is an indication that there is a willingness to move on that one, but neither representation wants to lose its rights.
1754. You understand how difficult it is to bring schools together across sectors, but let me say that that is the case even within sectors. Again, I will not mention the name of the school, but we were involved in a process of bringing together two controlled schools, a grammar and a secondary. One of the early issues was how we would address governance of the new school and a different set of governors. As a transferor, I went to the transferring Church and asked whether it would be prepared to give up its rights in order to create a new governance structure, which it did. It did so on that occasion, but I have to add that I do not think that the Churches would want to do it on every occasion. That church wanted to

- facilitate the community. Those are the kinds of issue, and that is just within the controlled sector.
1755. I detect willingness among those who represent the sectors to try to move towards sharing, with shared schools, clusters and even one institution in a village. However, how we arrive there is the big question, and how we protect or maintain rights and give representation is a challenge. The other thing is how to get the people on the ground to buy into it. Most villages are not 50:50, in the terms of Northern Ireland's division. So how do you persuade a minority community to buy into a shared solution in a village? From the outside, one asks why we cannot do this and it seems a sensible thing to do, but, actually, to convince people and let them feel comfortable and confident to do it is another thing.
1756. **Is that helpful?**
1757. **Miss M McIlveen:** I am just not sure how that can be reflected in the Bill, given the fact that you have highlighted it as a concern.
1758. **The Chairperson:** Let us take the issue that you raised — I am aware of the particular case that you referred to. If the legislation was such that there was the flexibility to be able to have a transferor on the board of governors of a controlled grammar school, would that have made it easier to keep the process alive? That is only in one sector. It could be replicated across sectors.
1759. **Rev Robert Herron:** In terms of the governance, yes, it would.
1760. **The Chairperson:** Yes, in terms of the governance.
1761. **Rev Robert Herron:** It would have meant that the transferors, in that particular case, would not have had to give up their rights.
1762. **The Chairperson:** Yes.
1763. **Rev Robert Herron:** But they were willing to do that in that situation. As a board, we appoint people to boards of governors, and we made the people concerned aware that we would attempt to facilitate their representation in some way.
1764. **The Chairperson:** As of right, yes.
1765. **Mr Mulholland:** In that instance, the outcome was that the school became a grammar school with a grammar school board of governors. The representation rights of the Churches were built into an understanding, and it has worked very well.
1766. We have another situation in our board area in which the board has expressed an interest in a controlled grammar and a voluntary grammar coming together. That brings in a whole new challenge, the likely outcome of which will be that the school will have to become one or the other, most likely a voluntary grammar school, in the future.
1767. Another challenge on the radar — we are aware of it, but it is not often spoken about — is the possibility that a maintained school and a controlled school might come together where the minority party is in the controlled sector. The likely outcome of that would be that the school would become a maintained school. The challenge, under a Transfer of Undertakings (Protection of Employment) Regulations (TUPE) arrangement, where the teachers would transfer across into the maintained sector, would be the likely expectation that the teachers from the controlled sector would have to obtain a Catholic certificate in order for them to teach in that school. I cannot say that that challenge has not materialised, because we are dealing with such a challenge at the moment in a nursery situation.
1768. **The Chairperson:** That was an issue that Jonathan raised earlier. We are keen to make sure that, as much as possible, we tease out in this process the practical implications of deciding to do a particular thing in legislation. It is easy to say what the law should be, but the practical implications, such as the one you have mentioned, are very serious because they have implications

- for the employment rights of individuals and so forth.
1769. **Miss M McIlveen:** I want to return to that point. Could something be done in the Bill to alleviate that problem?
1770. **Mr Mulholland:** I do not think that that can be sorted out in the Bill unless another sector could be created. I heard reference to joint faith schools, and that would require detail in relation to the make-up of boards of governors, etc.
1771. **Miss M McIlveen:** I am really just referring back to the point that you made in your paper about the establishment of clusters or federations.
1772. **Mr Mulholland:** There is no sector that exists that can cater for that situation. It may be that that could be looked at. That may involve the creation of a new sector.
1773. **Mr Lunn:** That may not be such a terrible thing. I was going to say that I am glad to hear that you managed to overcome the difficulties involved in effectively combining schools in the same sector. Lord knows what is going to happen. Is it not a pretty sad reflection that given, in the famous phraseology of the previous Minister and others, it is all about the children, if the best solution for the children of that area is the coming together of those schools, we should not be bickering about the size or the make-up of the boards of governors or what sector they are in? I know that this is for us, but really —
1774. **Rev Robert Herron:** Yet we find ourselves, again, working on the ground where we consult parents and staff and young people. It is about giving them confidence. I am involved in the Lisanelly project, which comes under our board's aegis. Some of the most encouraging and challenging evenings that I have had in connection with that project have been in engaging with young people from the schools through the Youth Service. It is important that they have the confidence to go forward as well, and we are trying to create the context where there is that confidence.
1775. **Mr Mulholland:** I will make a point that board members and staff would take issue with me for failing to bring up, and it relates to the position of the Council for the Curriculum, Examinations and Assessment (CCEA). At present, CCEA is not part of ESA but where it sits will be looked at in the future. That state of limbo results in CCEA being able to proceed and recruit outside vacancy control because it is not part of ESA. However, at the same time, because no final decision has been made, it could be considered to be part of the education-affected group. So, when posts start to come up in ESA and the trawl goes out, CCEA staff may apply for jobs even though they are not at risk. The plea is to make a decision around CCEA as soon as possible.
1776. **The Chairperson:** Thank you, Barry, for that worthwhile point. I thank you very much for taking the time and making the effort to submit your written presentation and deliver your oral evidence today. I have no doubt that your invaluable contribution will be used.

9 January 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Chris Stewart *Department of Education*

1777. **The Chairperson:** Thank you, Chris. I wish you a happy new year and look forward to continuing to work with you.
1778. **Mr Chris Stewart (Department of Education):** Thank you. I crave the Committee's indulgence. My voice may not last as long as any of us would like, but I am sure that I will get as far as the first difficult question to be asked. *[Laughter.]*
1779. **The Chairperson:** At which stage, it may break down.
1780. Is there any comment that you want to make in relation to the final point made by Barry Mulholland in the previous evidence session about the Council for the Curriculum, Examinations and Assessment (CCEA) and the trawl issue, the council being outside vacancy control and all of that? Or is that an issue that you —
1781. **Mr Stewart:** I can clarify that fairly easily. A decision has been made. The Minister and the Executive have decided that CCEA is not going to be part of the Education and Skills Authority (ESA). The arrangements for CCEA may be looked at in the future, but CCEA will not be part of the Bill or this round of change. Therefore, CCEA staff should not be regarded as part of the ESA-affected group and should not be part of the trawl arrangements to which

Barry referred. If that has not been made clear, we can make it so fairly easily. CCEA is simply not part of this legislation any longer.

1782. **The Chairperson:** We will get written confirmation from the Department, and we appreciate that advice as it stands.
1783. **Mr Kinahan:** Is CCEA coming to see us at any time?
1784. **The Chairperson:** Not in relation to the Bill, but we probably will see it at some stage. CCEA is listed among the issues that we need to look at. On this particular issue, we should get that clarification in writing because it may be of help.
1785. I will quickly try to summarise the issues. The Catholic teaching certificate was raised earlier, and you passed a note to the Committee stating that the Bill does not affect anything in relation to —
1786. **Mr Stewart:** If Jonathan Craig forgives me, I disagree with him. I have to clarify that the Bill does not affect this in any way. Where it is lawful at present for the certificate to be required for a post, it will continue to be lawful for it to be a requirement in the future. In future, as today, that decision will be one for the board of governors of the relevant school.
1787. **The Chairperson:** So, were ESA to be established now, how would the live issue that Barry raised — agreement between or amalgamation of two schools — be resolved fairly and equitably?
1788. **Mr Stewart:** I will give a slightly longer answer to that than you were expecting. The first point to make is that I do not think it would be affected by the Bill or by the establishment of ESA.
1789. If I may digress for a second, there is a very live example that Barry

and Rev Herron gave of the need to deal with a controlled school and a Catholic maintained school, and I say “Catholic maintained” very deliberately. Sometimes, and I am guilty of it myself, we use the word “maintained” as a euphemism for a Catholic school, but maintained is a management type. As we know, there are three Protestant maintained schools, which are owned by the Church of Ireland, so I talk about a Catholic maintained school very deliberately. If there is a perceived need and an acceptance in a local community to bring together a controlled school and a Catholic maintained school, it can be done today under the current legislation. As I often say to people when I am asked, the legislation is perhaps not the friend that we would like it to be in this situation, but it is not the barrier that some people fear that it is. The question is: what sort of school would the new school be? In law, you cannot have a hybrid. It cannot be half controlled and half maintained; it must be one or the other. It would be possible for the new school to be either. The maintained model is much more likely.

1790. At the risk of putting words into their mouths, I think that the Catholic trustees would have difficulty in buying into the concept of the new school being a Catholic school. There would also be a practical difficulty for them in that if it were a controlled school, the religious education within it would have to be non-denominational. So, the maintained model is more likely. What would such a school look like? It might be jointly owned by the Catholic Church and one or more of the Protestant Churches. That represents a significant challenge for the Protestant Churches because they would have to get back into the business of school ownership that they left many years ago, but there is nothing in law to stop that. So, that school would have trustees. Again, we tend to use the word “trustee” as a euphemism for the Catholic clergy. In law, trustees are the people who own the schools. There are Protestant trustees of Protestant maintained schools today. If it were a jointly owned school, it would

be a maintained school in law. It would have trustees who would come from the Churches that owned the school. Those trustees collectively would have the right to appoint a certain proportion of the board of governors. Under the Bill, this would be a voluntary school, so they would be the submitting authority, and they would write the scheme of management and the scheme of employment for the school.

1791. The two major challenges there, which were emphasised by board colleagues quite correctly, are getting buy-in and acceptance by the local community of that particular model and approach and then the very practical difficulty of how the Churches would come together and agree on the proportions. How many Protestant trustees would there be? How many Roman Catholic trustees would there be? How would they divide or share between them the nomination rights for boards of governors? Those are very real issues and challenges, but they are not challenges for the Bill. They are challenges to be worked out in communities and between parties locally. I say again, Chairman, that that can be done under the current legislation and would not be affected in any way by the Bill.

1792. In giving that digression, I have failed to answer the first part of your question, which was what happens in the transfer of undertakings protection of employment (TUPE) situation or the requirement for a Catholic certificate? I recognise the challenge pointed out by board colleagues, but I think that that is only likely to arise in a situation where there is a new post or where a post becomes vacant. At the point of transfer, if we are bringing two schools together, TUPE applies. Currently employed staff would transfer under their current terms and conditions and would have those protected. If a post became vacant or if a new post were established, and the board of governors of the new school decided that it was a post that required a Catholic certificate, they would be free under the law to do so, but that ought not to affect any staff transferring from

- the current controlled school, unless they, as internal candidates, wished to apply for that post.
1793. **The Chairperson:** Does ESA carry all the liabilities as the employer?
1794. **Mr Stewart:** Yes.
1795. **The Chairperson:** What happens if the employment scheme is referred to the tribunal? I think that point was made in the presentation.
1796. **Mr Stewart:** It was, and I accept that the clauses in that regard are rather complex. The bottom line is that if there is a dispute, until that dispute is resolved by the tribunal, the existing scheme or the new scheme that the submitting authority proposes to bring forward would apply. The danger in that is what would happen if some element of the scheme was clearly grossly unlawful? Could ESA stand by and allow that to go forward? Well, there is an additional safeguard in the Bill that empowers ESA to make representations to the tribunal if it thinks that some part of the scheme really was grossly deficient, and the tribunal could set that part of the scheme aside while it reaches an overall decision as to whether the scheme should be approved or modified.
1797. **Mr Kinahan:** I asked the question, and the witness said that there was an informal system for resolving a dispute. I am just worried about gearing up a tribunal and everything being stalled.
1798. **Mr Stewart:** It is actually formal, and there are two mechanisms. This is one of the areas where we need to ensure that we do not overlook what is in existing legislation. The totality of this is not just the provisions in the Bill. There are two mechanisms in the Education and Libraries (Northern Ireland) Order 1986. Article 100 provides for a dispute resolution between boards and the Department or between schools and the Department. Article 101, which you have heard me mention many times, is an even more heavyweight mechanism for the Department to rule on disputes or complaints. Those mechanisms would be available for that sort of situation.
1799. **The Chairperson:** Clause 9 raises a question that you have probably answered, but who is the final arbiter if ESA thinks that a board of governors is not following the employment scheme? Can ESA compel a board of governors to take a particular action?
1800. **Mr Stewart:** ESA is the final arbiter, in the sense that there is no tribunal mechanism, although I have mentioned dispute resolution mechanisms that are already there. ESA is the final arbiter, but it cannot second-guess the decision of a board of governors or substitute its own decision for that of a board of governors. ESA's power to intervene is very tightly circumscribed; all that it can ask a board of governors to do is to look at the matter again. Now, one has to concede the possibility there for stalemate and that it could go round in circles forever. However, the Minister and many stakeholders thought it important that ESA should not have the opportunity or authority to substitute its own decision for that of a board of governors. All that it can do — as was rightly described by Helen Duffy — is discharge a quality assurance role. That quality assurance role is to ensure that a board of governors has followed its own procedures. If it has not done so, it should be asked to look at the matter again and to follow its own procedures.
1801. **Mr Lunn:** On the back of that, would it not be normal for legislation to include a mechanism to resolve a stalemate?
1802. **Mr Stewart:** It would, and —
1803. **Mr Lunn:** The tribunal is referred to in other sections of the Bill. Clause 9 just tells you:
“ESA may require the Board of Governors to reconsider that matter”.
1804. **Mr Stewart:** It could, and that is a fair point, Trevor. However, I think that our starting point would be that, given the existence of articles 100 and 101, ample dispute resolutions already exist. The Executive felt very clearly that that

was not enough and there was need for an additional mechanism, in the form of a tribunal, around the specific issue of approval of schemes. Over previous weeks, the Committee has heard representations that the role of that tribunal may be expanded to cover any number of things. That is a policy decision. If the Committee or, eventually, the Executive are minded to go in that direction, it is technically possible to do so.

1805. **Mr Lunn:** Yes, but it is always this business of having to refer back to previous orders and other legislation. You cannot seem to put it into the new Bill, which would be so much simpler. If ESA and a board of governors are going round the houses and will not give way, can either refer it back to the Department for a ruling under article 100 or article 101?
1806. **Mr Stewart:** Yes; that would be the case.
1807. **Mr Lunn:** OK.
1808. **Mr Kinahan:** So, it can be resolved?
1809. **Mr Stewart:** Yes.
1810. **The Chairperson:** Is the situation likely to arise where the tribunal takes a decision that may favour the existing school, but the Department believes that that was wrong and uses article 101 to implement what the Department considers to be the best solution?
1811. **Mr Stewart:** No; that could not happen, Chairman. The tribunal's ruling would be final. If it disagreed, the Department's only recourse would be to seek a judicial review of the tribunal's finding.
1812. **The Chairperson:** How will the Youth Service be represented on the ESA board? Currently, it is not.
1813. **Mr Stewart:** It is not specified, but neither is any other profession or part of the education sector. However, there is a requirement for the four community members to be experienced in a field that is relevant to ESA's functions. That gives scope for someone from a Youth Service background to be a member of ESA, and I am sure that the Minister would welcome that if it transpires.
1814. **The Chairperson:** It has been said by a number of people, and even, to some degree, admitted by the Department, that clause 3(4) was clumsy or is not the final version of what we want in the Bill on the issue of compatibility with heads of agreement. All sorts of comments have been made about the rights and the wrongs of having or not having the heads of agreement. First, what is the current position on any changes to that? Has the Department considered any? Secondly, aligned to that is the issue that, in a few weeks, we will come to the end of the evidence-taking part of our scrutiny and move into clause-by-clause scrutiny. Do you envisage that, within that time frame, we will have sight of any amendments that the Department wants to make, because that would colour and inform the views of the Committee? We could go through a process and have reviews and even consider Committee amendments, and the Department could then say that it has an amendment to propose. Logically, how do you see that working out over the next few weeks?
1815. **Mr Stewart:** It is difficult for me to answer that last question because I will have to take a steer from the Minister on that.
1816. Perhaps it would be helpful to put that issue in a little bit more context. As with colleagues from the board, it is not for me to comment on whether it is a good or bad thing for the heads of agreement to be referenced in the Bill, but there are certain facts and consequences of having done so that need to be pointed out. The heads of agreement is a political document. Like many political documents, it is not written in the form of legislation and was not written with the necessary precision and clarity of legislation. It is an observable fact that there is what one might call a tension or an inconsistency between paragraph 5 and paragraph 10. My job, as an official, was to take that political agreement and convert it, first, into a policy memorandum and, ultimately, into a Bill that resolved that tension or inconsistency. The Minister and the

- Executive believe that we have done so. Clearly, some stakeholders, notably the Governing Bodies Association, feel that that is not the case and that a different approach is required. Nevertheless, the Executive took the decision that the Bill would resolve any tensions or inconsistency and deliver the heads of agreement.
1817. A difficulty arises because of the direct reference to the heads of agreement in the Bill. That might best be described as a short circuit. It means that we can no longer rely on the policy process having dealt with any tensions or inconsistency, and it means that the words in the heads of agreement have to have the force of law. The difficulty that arises is that they do not have sufficient clarity to be applied with the force of law, and the legal advice that I have received is that the clauses, as drafted, are not capable of being operated and need to be changed. I await a steer from the Minister on how that is to be done.
1818. **The Chairperson:** Are there any other questions?
1819. **Mr Lunn:** Sorry, we keep asking you political questions.
1820. **Mr Stewart:** I will keep avoiding them, Trevor, do not worry.
1821. **Mr Lunn:** You could read it that 10(c) of the heads of agreement is a nod to the voluntary grammars so that they can, if they want to, believe that they are still the sole employer of their own staff. That is what it is about.
1822. **Mr Stewart:** If I misquote or paraphrase what the voluntary grammars have said, I am sure that they will correct it. It is their view that the heads of agreement can only be given effect if they have some form of opt-out from the employment arrangements in the Bill, and that involves them remaining as formal legal employers in their own right. That is not the view of the Minister or the Executive today.
1823. **Mr Lunn:** Would the Bill's provisions take precedence over political heads of agreement?
1824. **Mr Stewart:** The Bill's job and mine, in causing it to be prepared, is to deliver the heads of agreement. We believe we have done that in a way that resolves the tension or the incongruity in the heads of agreement. However, that is short-circuited by the direct reference back to it. As I said, the legal advice that I have is that those clauses, at present, simply will not work.
1825. **Mr Lunn:** The clauses in the Bill or the heads of agreement?
1826. **Mr Stewart:** The Bill, as drafted, would require employment schemes and schemes of management to be compatible with the Bill, because that is a legal requirement, and with the heads of agreement. The legal advice is that it is not possible to be compatible with the heads of agreement because two paragraphs in it are mutually exclusive.
1827. **Mr Lunn:** Yes; a bit like the Good Friday Agreement. Thank you, Chairman.
1828. **Mr Craig:** Chris, I have listened to all of this in fascination because it reminds me of something else that I will not refer to. Why is the Department so insistent on ESA being the employing authority and having employment rights over, I suppose, everyone in the education sector? That is clearly causing an issue in the voluntary sector. What is the rationale there? What rationale is driving the Department to that position?
1829. **Mr Stewart:** That is a fair question. The policy development challenge for us over the past almost seven years that I have been involved in this was to deliver two policy aims. The first was to deliver the benefits of a single employing authority, such as easier and more effective workforce planning, easier —
1830. **Mr Craig:** Chris, I know that you are in a train of thought, but can I challenge you on that? We have already heard from the bishops and others. There is not going to be a single employment market out there. That fact is blatantly obvious to me from what I have heard today. It is a great aspiration. I was under the foolish impression that you were going to get somewhere on this one, but it is not

- going to be the case. I do not see even two areas of employment in education anymore. When I dig down into this, I see about seven separate areas where there are different criteria for whatever poor teachers want to go for those jobs, and that will not change under the Bill.
1831. **Mr Stewart:** You are right that it is not going to change under the Bill. I understand the point that you made, and there may be a range of views as to whether we will see more or less movement between sectors than we currently do. Nevertheless, one of the two policy aims that the Ministers asked me to take forward was to provide for a single employer that would deliver those benefits — whether one thinks that they are real or not — of greater sharing and co-operation across sectors and better and more effective workforce planning.
1832. At the same time, however, we heard a range of stakeholders from right across education argue strongly that it would be a mistake to have a single monolithic, top-down commander and control employer; that good schools were autonomous schools; and that schools worked better if they had the autonomy to run their day-to-day affairs, specifically, as you heard again today, if the boards of governors — the people charged with running such schools — made the decisions on the appointment, management, promotion, disciplining and dismissal of staff.
1833. The challenge for me was to weave those two things together. They are not easily woven together. I willingly concede that it is a difficult recipe, but we genuinely believe that we have done that. We have a model that will provide the benefits — whether one believes in them or not — of a single employing authority, but which will still allow for as much autonomy to be in the hands of a board of governors as that board wishes to discharge. It is not a model that has been arrived at easily. It took us a number of goes to get there, but we genuinely believe that it delivers both those policy aims.
1834. **Mr Lunn:** Will it get around the clause in the heads of agreement that you referred to?
1835. **Mr Stewart:** No; the heads of agreement is a difficult problem. Again, colleagues from the voluntary grammar sector would say that that is all very well, but even maximised delegation does not do it for them. They object on principle to the loss of employer status, and we recognise that concern.
1836. **Mr Craig:** We are at an impasse.
1837. **Mr Lunn:** It comes down to who is the employer. I thought we had settled that. It is pretty plain in the Bill who the employer is. We have been following that long enough, and I think that the legislative draftsman has done a good job.
1838. The fly in the ointment here is the heads of agreement. I do not think that we can bypass this. As a Committee, we need to clarify what is happening here and see what the solution is. We have had this discussion, Chris, here and with the schools as well. Under the ESA provision, the board of governors of a voluntary grammar school would no longer need to carry liability insurance because ESA is the employer. If you accept the heads of agreement, boards of governors would have to carry such insurance. That is the starkest example that I can think of, but it is totally unsatisfactory to have that contradiction. I am glad that the Western Board has highlighted it because it had not occurred to me. We really have to tie that one down.
1839. **The Chairperson:** OK. Any other comments? OK. Thank you very much, Chris.
1840. **Mr Stewart:** Thank you, Chair.

16 January 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr David Lambon *Catholic Heads*
 Mrs Carol McCann *Association*
 Mr Dermot Mullan

1841. **The Chairperson:** Good morning. You are very welcome. Thank you for taking the time to speak to us today and for being so patient while waiting to make your presentation. We are running on time, which is unusual for us. You are here to give evidence on the Education Bill. Please make your presentation, after which members will have an opportunity to ask questions.
1842. **Mrs Carol McCann (Catholic Heads Association):** Good morning and a happy new year to everyone. We are grateful to have the opportunity to come before the Committee to represent the views of the Catholic Heads Association (CHA). As you are all aware, this is a once-in-a-lifetime opportunity to get an extremely important piece of legislation right for future generations of young people in Northern Ireland. As an association that represents the interests of a high proportion of post-primary children and the aspirations of their families, we are grateful for the opportunity to meet you this morning. Thank you for that.
1843. The Catholic Heads Association is an association of principals of Catholic voluntary grammar schools. As such, we represent the views of the communities of 28 voluntary grammar schools, which amounts to 40-2% of Catholic second-level educated pupils – and their families – from the school-going population of Northern Ireland. I just want to clarify that I was previously here as a member of the Governing Bodies Association (GBA).
1844. All the CHA schools are members of GBA as well. GBA, as you know, is an umbrella organisation that represents voluntary grammar schools in Northern Ireland, across both state and Catholic sectors. It is a kind of cross-faith group, and, collectively, GBA represents one third of the post-primary sector. As the current chairperson of CHA, I am a member of the executive of GBA. I am one of two acting principals on the executive. CHA schools currently have representation on the GBA executive as governors of their schools. There are six governors in total. So, that is where CHA fits in.
1845. The Catholic Heads Association strongly supports the voluntary principle, through which the management, leadership, financing and success of our schools have thrived thus far. We believe that the voluntary principle should be enshrined within the Education and Skills Authority (ESA) legislation. Voluntary schools have proven that this way of working is efficient and effective, and it has led to a culture of accountability and sound governance, which is reflected in the sound finances and excellent outcomes for the pupils in our schools. At the meeting in December, I spoke of the flexibility and efficiency of the way in which voluntary schools operate. I am pleased to hear that other groups have come before you. The Commission for Catholic Education and the Council for Catholic Maintained Schools (CCMS) were before you last week, and I noted that they recognise the value of the voluntary principle. They stated that we

- live within budget and are successful schools.
1846. We are very concerned that Catholic voluntary schools, as they currently exist, may be negated as we go forward. We believe that it would be a retrograde step to remove the right of voluntary schools to be responsible for the recruitment, selection and retention of their staff, and we welcome the intention to support sectoral bodies as laid down in clause 63. It appears that it is envisaged that there will be support bodies for all of the sectors except the voluntary grammar sector, and we see that very much as an equality issue.
1847. Those are my points for this morning; now I will introduce those with me. Mr David Lambon is principal of St Malachy's College in Belfast. He was appointed to the post in 2011 and formerly he was principal of St Mary's Grammar School, Magherafelt, between 2004 and 2011. Prior to that, he was principal of St Eugene's College, a Catholic maintained school in Rosslea, County Fermanagh. Consequently, he has tremendous experience in the area of school management and, more importantly, has knowledge and experience of working in two distinct systems. Today, he will provide you with the perspective of working in a Catholic voluntary grammar school versus working in a maintained context, and will discuss the differences between them.
1848. Also with me is Mr Dermot Mullan, the principal of Our Lady and St Patrick's College, Knock, since 2009. Prior to that, he served as principal of St Patrick's Grammar School, Downpatrick, from 2003 to 2009, and prior to that, as an education officer and head of building at CCMS, between 1996 and 2003. Today, Dermot will address the employment function, heads of agreement and skills. From his experience within the Catholic voluntary grammar system and his former role in CCMS, he is very conversant with the various systems in education.
1849. One of the big things that I talked about last time was the whole business of efficiency, and I think that I covered that quite well at that meeting. So, I will pass you over to these gentlemen. I do not know whether you want to fight as to who will go first.
1850. **Mr David Lambon (Catholic Heads Association):** I have read the numerous Hansard records of the evidence presented to the Committee over the last couple of months. It will probably come as no surprise to you that we, as representatives of the Catholic grammar schools, have voiced concerns similar to those raised by CCMS and the Governing Bodies Association. My submission to you is to give you a practical insight into why the debate surrounding clause 3(1) and the apparent contradiction with the heads of agreement in clause 10 is of such importance to us all in order that we can work together to improve our education system.
1851. As you are already aware, Catholic grammar schools are independently managed by a board of governors who directly employ every member of staff. We believe that a key feature of the success of our schools has been the link between employment and staff who are supportive of the Catholic ethos of the school. As employers, boards of governors in our schools have a very hands-on role in the changing priorities of their school, and they have the independence to respond quickly and effectively to any gaps in employment or any difficulties or issues that may arise with employment matters.
1852. Each of our schools, as you are well aware, is subject to ongoing internal and external audits. We are highly accountable — as we should be — for every penny of public finance. Efficiency measures exist at every level, and the high level of autonomy that exists, underpinned by the essential need to live within budget, has been the envy of some of the other sectors for some time. We believe that that model, which allows a school community based on a strong Catholic ethos, enables us to provide good value for money for the public purse and to serve the changing

- needs of our pupils and those in our learning communities very well.
1853. My experience in the Catholic maintained sector, although very positive from the viewpoint of HR support, guidance and direction provided from CCMS, was much more complex. Teachers were employed by CCMS and teaching support staff were employed by the education and library boards. That was a system in which many of the functions that I previously mentioned were carried out by organisations remote to the school. Centralisation of employment meant that there was often a significant time lag in responding to gaps in employment. Centralised tendering would often mean that a simple maintenance task would take a very long time to be completed, and may not always have represented the best value for money for the public purse.
1854. I do not want to labour some of those rather anecdotal points. I am very happy to answer any questions, but I believe that, if one of the key concepts of ESA was to increase the autonomy of schools, that key issue of the employing authority requires a resolution. When I was coming into Stormont this morning I felt that it was somewhat ironic that we are now involved in a devolved decision-making process but the Bill in front of us almost plans to centralise much of the organisation. Perhaps one of the central tenets of ESA was to increase the autonomy of schools, and, unless this issue is resolved, it may fly in contradiction to what it started off as.
1855. **Mr Dermot Mullan (Catholic Heads Association):** Thank you, Chair, and thank you to your Committee colleagues for the invitation to be here today. We appreciate it very much, and we are very aware that, as you possibly come to near the end of your submissions, some of what we say may be repetitive to you. We apologise for that, but we get one chance at it and we want to take it. We also wish to put on record our admiration of your tenacity and perseverance, even if there is a sense of ennui sometimes among you. It is appreciated, and we wish you well with your work.
1856. Following on from what David said regarding the employment function, the paper that we submitted to the Clerk and the Committee clearly laid out our difficulties and problems with the apparent contradiction between the heads of agreement, which are there to protect the role and status of boards of governors, and the way that the single employing authority and its role are laid down in the draft legislation. At the very least, we view that to be somewhat confusing. Moving forward on the basis of a new dawn brought about by ESA will be hampered if there is not clear legislation. I am sure that you and your Committee members are very aware of that. The ambiguities that there are must be ironed out and resolved so that school leaders, owners, governors, teachers, trustees, transferors and everyone else are very clear in their understanding of what ESA can and cannot do. We exhort and encourage you, through your good work of scrutiny, to try to ensure that the draft Bill that comes before the Assembly has that issue ironed out.
1857. As regards the employment function of ESA, I, like my colleagues, have perused the Hansard record of your Committee meetings, and I will draw on a practical example that might help to illustrate the difficulties that may lie ahead. The employment function with regard to terms and conditions in voluntary grammar schools is, at present, the remit of the board of governors. Under the new scheme, as far as I understand it, when we come to discuss the terms and conditions of teachers, which are part of an employment contract, bearing in mind that everyone will be subject to the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), who will take the lead role? At the moment, the teachers' negotiating committee deals with that. All sections and sectors are represented on that committee and, therefore, when a piece of guidance is handed down, it is generally accepted by the governors of the school. In the

voluntary grammar school sector, where we act as our own employing authority at the moment, it is possible for us to put our own imprimatur on that piece of guidance and adopt it as a working policy of the board of governors. If we look through the lens of how terms and conditions of teachers and all staff are ultimately to be addressed, the question I would pose is this: will they be addressed by ESA? If they will be, then ESA would again be assuming a greater employing role. For all the fine words that we heard that the board of governors will be the employers, I think that that might counteract that. It is worth looking at that and at TUPE as well, because the schedule seems to give proof that ESA will be the employing authority. There is possibly another point: I think that the draft legislation needs better definitions. Perhaps it would be helpful if, among its definitions, the draft legislation had a definition of an employing authority to tidy that up and to help everybody in the new dawn to be clear on who can do what, when and where.

1858. Our boards of governors are happy to see the heads of agreement in the Bill giving some protection to the boards of governors. We have looked closely at the clauses on the schemes of management and the schemes of employment. Once again, they appear to be rather cumbersome, and there is the possibility of divergence from that. For example, clause 62, which looks at the role of the Office of the First Minister and deputy First Minister (OFMDFM) in the tribunal on employment and schemes of management, could cause even more confusion when a dispute arises between a board of governors and ESA.
1859. Clause 38 refers to standards. Let us be very clear on this: we fully support the need to drive up standards, but driving up standards cannot be diverse across the board of governors, a sectoral body, ESA and the inspectorate. Again, there must be clear guidance and a clearer steer. All of those four bodies are going to lay claim to the right to drive up standards, and I certainly think

that needs to be clarified. I feel that the sectoral bodies will be pitching for a claim to drive up standards, and they can make a very valid case. Obviously, the inspectorate is there as well to monitor and advise on the raising of standards, but where do the sectoral bodies fit in when it comes to improving standards?

1860. There could be difficulties between the position of the board of governors, ESA and the submitting authorities, as referred to in clause 9.
1861. I will finish and allow you to ask some questions. We argue in our paper that, internationally, our view is that the removal to the centre of a control-and-command type of organisation is not the way in which leading education systems are going. We, in Northern Ireland, are either lagging behind good practice internationally with regard to the administration and management of our education system or we are too far ahead in that we risk imposing somewhat of a draconian straitjacket on the role of governors, teachers and school leaders.
1862. To conclude, there are a lot of lessons to be learned from what happened in the health service. I am sure that the Committee will take cognisance of the health service element of the review of public administration (RPA). There are practical examples of things that worry us. In our three schools, the boards of governors are the employing authorities at present. David may employ a member of staff on a contract at a different pay scale than I do. For example, he may pay his bursar more than I pay my bursar, and Carol may pay on a different scale again. When we converge under ESA and when TUPE occurs, I would imagine that the most expensively and best paid bursar will feel fine. However, the poorly paid bursar who finds that there is now a bursar in the system getting more than him for similar work will make a claim for a salary increase to be compatible and comparable with other officers, teachers or employees of the school under ESA. There may be lessons to be

learned from the health service that we could take on board.

1863. I may be asking more questions than giving answers, but this draft Education Bill begins with, and is heavily focused on, the Education and Skills Authority. As a head teacher, I have to ask where the skills are in this legislation. Where is the work on trying to improve Northern Ireland's skills base so that our economy can be best served by the young people whom we can retain in Northern Ireland and who can work to improve everyone's standard of living and economic well-being? I have dredged through the draft legislation, and I cannot find any mention of skills. I do not see it there. Why is it called an education and skills authority? It is an education authority, but the skills part is very important. As I saw on the plasma screens at the entrance to the Building, your colleagues on the Committee for Employment and Learning are having a presentation this morning about the skills shortages in Northern Ireland. There is a PowerPoint presentation in the coffee shop. I was very taken by it. I would have thought that this Committee, which is discussing the Education Bill that will lead to the Education and Skills Authority, would need to have a little bit of joined-up compatibility with some colleagues. Where are the skills in all this? They should be there, but they are not and there is no reference to them. How will this education authority improve the skills levels of 11- to 19-year-old young people in the schools that we serve and in all other schools across Northern Ireland? Thank you, Chair.

1864. **The Chairperson:** Thank you, Dermot, David and Carol. You made a point about coming to the process late, or near the end of our consideration of the Bill. I assure you that we place no less importance on your organisation and the schools that you represent, or the views that you express. Those views are valued and the way in which they have been made will be taken seriously.

1865. There are a number of things that you mentioned that I want to tease out. It may be useful to clarify things in

our own minds. We have a variety of interests involved in education provision and a variety of organisations that, at different levels, want to have an influence, say, or opinion on education. As far as your schools are concerned, do you exercise your autonomy to the extent that, even within the Catholic system, you value the right to be able to, on occasion, differ from the trustees, CCMS and the bishops? I do not say this to try to open any of that up in the public domain, but you have autonomy for the purposes of the value of education, not for the value of some other view or opinion or whatever. I ask that because the bishops were here last week and, in their submission, they were keen to have the Bill's definition of Catholic school changed so that they would be responsible for Catholic schools, as opposed to what the current arrangements are, where you have maintained schools, which are not all Catholic schools, voluntary schools, and so on. So, there are varying degrees of authority and autonomy in schools. Do you have a particular view that could inform us as to what is preferable in trying to ensure that we treat all of our sector in a fair and equitable way that does not give preference to one or other?

1866. **Mr Mullan:** I will answer your question by saying that we believe very firmly from our experience that the greater the amount of autonomy you can give a school, the better it is going to be and the more flexible it is going to be in its approach. I hope that I do not sound trite, but it is the young people who are in the laboratories, classrooms, gyms and playing fields of our schools who we have to be concerned about here. As managers and leaders of our schools, we know that by giving us a high degree of flexibility, allied to the accountability that we must, as David said, all be ready to accept and wear as a mantle of public probity, we can manage to provide for the needs of our young people on the ground in a much more satisfactory fashion.

1867. All of us would probably agree that there are times when bureaucracy gets in

- the way. However, there are times when bureaucracy and systems can protect you and help you to improve standards, but we really value our autonomy. The trustees are the owners of our schools, but in our schools, as voluntary Catholic grammar schools, it is mostly the boards of governors that we deal with on a day-to-day basis, and we manage on a daily basis. It is the boards of governors that get involved in the nitty-gritty of finance, the curriculum, staffing, recruitment, health and safety, etc. The trustees are there with regard to ethos and, indeed, ownership of the land. They have a very clear role to play as guardians of Catholic schools, and we refer to them, but autonomy is the thing that lets us do most and gets us our success.
1868. **The Chairperson:** You would not argue that, as a result of you having more of that, or at least retaining the level that you currently have — and I know that this is the case, so I suppose that I have answered my own question — it has led to a perception or accusation that you are any less what you are; a sector that provides a very good education not only for children who are predominantly from the Catholic community but for children of other religions. The ethos and identity of the school has been in no way damaged as a result of that. I think that there seems to be some fear out there that, if you give or continue to have that autonomy, others will somehow be weakened as regards the influence they have in maintaining the ethos and identity of a particular school, whatever that school might be. In your case, it happens to be a Catholic grammar school.
1869. **Mr Mullan:** I feel that the ethos of the school can be well protected, and, in the appointments process, particularly to headship, it can be almost safeguarded, but we feel our ethos no less than we have in the past. We cherish and protect it, and, as our bishops say to us quite publicly, we are a Catholic school, not for Catholic children; rather our vision and the precepts that we hold in our education system and which we inculcate into staff and pupils are based on a philosophy of Catholicism, which has gospel values and respect at its core. If we are not respectful to others, we are failing in our values. We, as principals, work to try to make sure that those values are disseminated across the staff and the school without infringing on anyone's personal view or rights. It would be very wrong to do that.
1870. **The Chairperson:** You mentioned TUPE and the difference in what would be paid for one particular member of staff — that could probably apply across a range of members of staff — the variations and the concern that there would be in one organisation, because you would have challenges to that.
1871. You also mentioned the appointment process and its importance. One of the issues that has been raised, and was raised at the previous meeting, was the Catholic certificate in religious studies (CCRS). The remit of the Bill will not change any of that; the certificate will remain as it is. If you are to have a single employer, do you have any concern about how that would still be implemented, protected or used, given that a single employer would have a larger range of teaching staff — a very crude estimation is anything between 45% and 50% of them — who would not have that certificate?
1872. **Mrs C McCann:** The majority of our staff in the grammar schools do not have the Catholic certificate. Obviously, RE teachers would be trained in St Mary's University College. Some of our staff have a Catholic certificate, but the majority do not. In fact, people who are not of the Catholic faith teach in many of our schools. Sometimes that depends on the geography of the school. People are a bit surprised that we have in St Dominic's people who are non-Catholic on the staff of the school. You do not have to have a Catholic certificate to teach in a voluntary grammar.
1873. **Mr Mullan:** CCMS requires the Catholic certificate for primary school education only. In secondary, be that grammar or non-grammar, it is not a requirement at all.

1874. There are interesting developments in that area. Obviously, there has been a request that CCMS, on behalf of the Catholic trustees, review the use of the Catholic certificate. However, that is for another forum to discuss. We do not have in our requirements when we employ anyone the need for a Catholic certificate.
1875. **Mr Lambon:** One thing that we are obviously very keen on is that the employees support the ethos of the school. We very much cherish diversity in our staff, but we want to have that link between ethos and employment.
1876. **The Chairperson:** You have trawled through Hansard, so you are obviously well aware of the debate. When you come to look at a Bill such as this, nine time out of 10 it will coalesce and be condensed down to a number of very important or key issues. One of those remains the issue around the heads of agreement, particularly paragraph 10 of that document, and the employing authority in clause 3 of the Bill. I commend you, because sometimes when we get presentations all that we hear about are the problems. Very seldom are solutions brought to the table. You bring a solution to clause 33, which you were to have a view on and which, in your opinion, could resolve the contradiction and indicate that the board of governors is solely responsible for the selection, retention and dismissal of staff.
1877. I picked up what you said, Dermot, although I cannot remember the exact words used. I think that you said that, if you were to believe all that you were being told by the Department, you would get that as a result of ESA but that the reality, as it would play out, is far from that. If clause 33 were to be implemented, changed or amended, you could, with a great degree of certainty and clarity, say that that now was the case. Therefore, what the Department is saying and what the practice will be are one and the same.
1878. **Mr Mullan:** Clause 33(3)(b) could easily be amended to include that function for selection and retention in the scheme of management. That would perhaps get us out of the difficulty with the heads of agreement in clauses 5 and 10. We picked that up from our present schemes of management. In voluntary grammar schools, we have laid down the way in which you recruit governors and select the number of governors on the committee. It is very well laid down and works very well.
1879. The question is this: do the Minister, the Department of Education and the Assembly wish to empower boards of governors, which are grounded in their local communities? Our schools serve local communities, and, therefore, to me, boards of governors are pivotal in many ways, not just through the employment function but in standards and advocacy in area planning. They have been proven in the Catholic and voluntary grammar sectors to be very capable at that. They are trained in that and are able to bring support and advocacy on behalf of the school in their community to the Department.
1880. **The Chairperson:** I have one final point before we go to members. It is interesting that David has experience of working in both management roles. He did an excellent job in Magherafelt, and I had the opportunity to visit the school. Your previous role, David, was in a maintained school that had a different governance arrangement, and you have given us some examples of the practicalities around maintenance and other issues and told us how that allowed you to make a decision more quickly. It may be an unfair question because you were in the maintained sector first and then moved to a voluntary grammar setting, but do you believe that there is a desire in schools that do not have the voluntary principle to have that degree of autonomy and independence and to be unshackled from be it a board, ESA, CCMS or Tom Cobby, rather than have to report to them before they make a decision on an issue on the practical day-to-day running of a school?
1881. **Mr Lambon:** Very much so. Personally, I believe that an education system

works well when you have the maximum amount of autonomy, and the system that I currently enjoy is the envy of the controlled and maintained sectors. It is about the speed of response, and the best person to do that is the person in charge. If you have a year group coming forward and want to look at a subject or area or there is a temporary person whom you need to replace, even in CCMS there could be a time lag of 10 days or two weeks, whereas I can have an ad in the paper the following day. We have that ability to respond but also then to go through the checks and balances with boards of governors, which have a very strong interest in the school. That is why it is so vital that, as Dermot said, the employing authority retain that role and be able to take decisions quickly and consistently.

1882. **The Chairperson:** Would you be more content with any other services being with an organisation such as ESA or a board? There is the impression that, in the voluntary system, schools are able to stay so alone and isolated that they do everything, so they then have no recourse to help or assistance. At what stage would it be useful for the schools that operate a voluntary principle to have access to that?
1883. **Mr Lambon:** As Dermot mentioned, through the TNC documentation, CCMS provides a good role for legal advice, employment advice and even some elements of staff development. I think that there is a role for a central body, but it needs to be very clearly defined what exactly that role is.
1884. It is difficult when you have voluntary schools that all have autonomy to ensure an element of consistency across the sector. Therefore, perhaps a central point for legal advice on employment and terms and conditions, which provides a consistent approach, would be of benefit.
1885. **Mr Mullan:** I stand to be corrected, but, over the past 20 years, I cannot recall any voluntary grammar school getting into difficulties over employment, selection, recruitment, health and safety, insurance or even building or maintenance. Sometimes we turn to other bodies and sometimes, yes, you will get a freebie from CCMS, but that is why you go to it. It is largely helpful, but now it will disappear. If you are autonomous, you can seek advice from your solicitor, a HR company or a consultant.
1886. **Mrs C McCann:** We do that regularly. That is one of the reasons that the Catholic Heads Association exists. We are like a loose federation of principals and talk about things like that, seek one another's advice and ask whether someone has a paper on something, or whatever. Likewise, as we come under the umbrella of the Governing Bodies Association (GBA), we may seek advice from our colleagues in the state voluntary grammars. We have a very good relationship with the various principals. If we need specific legal advice, we pay for that independently. However, it is rare that we have to do that, as much of the expertise is among principals and is shared collegially among them.
1887. **Mr Mullan:** The only thing that we may not be able to provide in the future — it will be catered for under area-based planning — is capital building. We can take care of maintenance ourselves and even minor works, but when you get into major capital building and the rebuilding and refurbishment of schools, you certainly need that central role. At the moment, that is taken on for us by the Department's building branch and the building advisory branch. There would probably be the need for that kind of tier of support and management.
1888. **Mrs C McCann:** I would like to commend building branch. When we had the newbuild, it was always available, always very good with advice and more than helpful.
1889. **The Chairperson:** I am sure that you have seen the Department's proposed changes for procurement. If you have not, we can certainly make them available to you.

1890. **Mrs C McCann:** That is slightly different.
1891. **The Chairperson:** I think that that raises all sorts of concerns. I am not being critical of the Department, as Central Procurement Directorate (CPD) is not in the Department of Education but in the Department of Finance and Personnel (DFP). In many respects, CPD needs to be overhauled. The procurement messes that we have had, the timelines and the disasters have been totally unacceptable.
1892. **Mrs C McCann:** That was more recently, was it not?
1893. **The Chairperson:** It was. It was only in the past couple of weeks that we saw that.
1894. **Mr Mullan:** Following on from what David said, even when taking it at quite a leisurely pace, I can recruit and have a teacher or member of staff in post in six weeks. It takes six weeks to have that done and dusted and properly administered. That allows us to be flexible and responsive to parents' and pupils' needs. In the controlled or maintained sector, that may take six months. I am a member of the council of CCMS and know that, when posts have to be ratified, members are required to come in to ratify them. That alone can take a month.
1895. **The Chairperson:** And you still might not get the person whom the school wanted in the first place. We are still waiting to see who the new chief executive of the Belfast Education and Library Board will be. Therefore, we go on. If they are so centrally controlled, processes here are very problematic.
1896. **Mrs C McCann:** We can do it very efficiently, but we have to live within the law. We abide by the rules. It is not that we are doing it in an ad hoc way.
1897. **The Chairperson:** It is not that you have done anything with an appointment that has disadvantaged candidates C or D. That is all subject to challenge, scrutiny, and so on.
1898. **Mrs C McCann:** Absolutely.
1899. **Mr Kinahan:** Thank you very much for your presentation. I want to explore one or two points that Mervyn touched on. We were talking about clause 33 and the word "agree", wherein lies a whole mass of hidden problems. With your ethos, how do you feel about that and how will that relate to the boards and the nominations that are made to boards from other bodies? It is very difficult to agree something if everyone is not on the same page.
1900. **Mr Mullan:** If it is a true partnership, there will be agreement. Should we not put something in place that drives us towards agreement and underpin that with good legislation?
1901. As I said earlier, this is about respect for one another, and, in many ways, the engine that principals rely on to drive up standards and have good schools is their boards of governors. Governors are not transient. Many of them have been on boards of governors for many years, and the term of office can easily be eight years. They get to know the school, and what they put back into the schools through their time, effort, energy, expertise, knowledge, help and assistance is phenomenal. They are all unpaid and voluntary, yet when they know the school, its ethos and how it is run as well as they do, I feel that they deserve a position that is adopted in agreement.
1902. I do not think that "agreement" or "with reference to" are a million miles apart. In the true spirit of partnership and co-operation, trustees who depend on boards of governors for the management of schools should not have a difficulty with that. That would also apply to the transferors or any other ownership body.
1903. **Mr Kinahan:** OK. I am aware that there are areas where governors have been put on to bodies that did not necessarily fit the ethos of the school. That adds to the difficulty in getting the agreement. However, I will move on.
1904. Carol, you mentioned that you represent 40% of Catholic —
1905. **Mrs C McCann:** Yes, 40.2%.

1906. **Mr Kinahan:** Last week, CCMS mentioned 6.2%.
1907. **Mrs C McCann:** That might have been a reference to the overall school population. I was trying to work that out myself. We represent 40.2% of Catholic second-level-education pupils and their parents.
1908. **Mr Kinahan:** It is just that 6.2% does not seem to be much, but 40% —
1909. **Mrs C McCann:** Yes, I picked that up. I assume that that 6.2% is throughout the whole population of Northern Ireland from nursery education. That is all that I could work out from the figure.
1910. **Mr Kinahan:** When representatives of Association of School and College Leaders (ASCL) were before the Committee, I asked them about CCMS representing Catholic voluntary schools and got shot down fairly quickly. Then, when the heads of the boards and representatives of CCMS were before the Committee, Jim Clarke indicated that he was not keen on the grammar system. It did not appear at all in the presentation that we had last week, and we then had the move to rename “maintained” to include the whole Catholic system. Bubbling in my mind my is the question of what the relationship is between your schools and CCMS. You touched on it just now, but can you expand on that?
1911. **Mr Mullan:** Currently, CCMS has no jurisdiction whatsoever, but that is not to say that we do not refer to it. As David said, it has a cadre of officers and a management structure that can produce very good policy documents. I would hold those up to anyone. It also has schemes of employment that I have adapted and used in my school, and principals who have a thorny issue and need a little bit of free advice will get that over the phone from a personnel officer in CCMS. However, CCMS is a very lean organisation with a budget of approximately under £3 million, and what you get for your money from the public purse for £3 million from CCMS is, in my opinion, superb.
1912. **Mr Lambon:** In our schools, the board of governors is the independent employing authority that manages the school.
1913. **Mrs C McCann:** Dermot might have a closer relationship with CCMS. I have no connection with it, but then I have never worked within the CCMS context. Our school is totally independent — there is no connection.
1914. **Mr Lambon:** Equally, I make use of the documentation that I can find from the Belfast Education and Library Board on policies. I shop around to find best practice. That is what you look for.
1915. **Mr Kinahan:** If I may move on to the next question, you mentioned the sectoral body and need to have sectoral bodies. Last week, as you know, it was suggested that we should have another sectoral body, whether that be GBA and others that represent the voluntary sector all the way through. However, that then throws the balance of the whole of ESA.
1916. Alternatively, we could look at trying to get some change into the other bodies that represent your schools. However, I get the impression that you would prefer to be in a body that allows you to be autonomous.
1917. **Mr Mullan:** I think that we run the risk of having a huge organisation that has all these layers right on top of everyone and running the whole way down through the system. We have to be confident in ourselves as a society and in the importance of being entrusted with the education of young people so that we have a flexible, light system that is responsive to need and can move when the landscape changes. The board of governors is, to me, fundamental in the life of a school, for reasons that I have outlined and will not go over again.
1918. Let us also be very clear that the trustees mean a lot to us, and they have supported and maintained us in many ways over many years. They are the guardians of the Catholic ethos to which we subscribe.
1919. **Mr Lunn:** Thank you for your presentation. If I were in your position,

- I would probably resent the loss of independence, which is your main concern. However, I am not in your position. Where I am coming from is that ESA is coming. We would not be sitting here having this kind of discussion if there were any doubt about the fact that ESA is going to be brought into play fairly shortly; for a start, there would not have been heads of agreement otherwise. You have actually raised some new points. I thought that we were going to have exactly the same sort of discussion that we had with GBA and various other bodies, but you have brought up the TUPE situation, which certainly requires examination.
1920. However, I really want to ask about the main thrust of this, which is the scheme of employment. Your submission states that the Bill:
- “in Section 3, gives primacy to ESA in determining the contents of a Scheme of Employment”.*
1921. The Bill does not state that. Have you a copy of the Bill before you? Point it out to me where it says that.
1922. **Mr Mullan:** Does the Bill not state in clause 3(1):
- “All teachers and other persons who are appointed to work under a contract of employment on the staff of a grant-aided school shall be employed by ESA.” ?*
1923. **Mr Lunn:** Yes. I accept that. It does not state that it:
- “gives primacy to ESA in determining the contents of a Scheme of Employment”.*
1924. **Mr Mullan:** Trevor, if there is a dispute regarding the scheme of employment, it goes back to ESA first. The scheme of employment will go back to ESA for adjudication. If that disagreement continues, the tribunal can be brought into play. To me, that is the primacy of ESA. ESA is above —
1925. **Mr Lunn:** Clause 5(4) states:
- “ESA shall approve without modification a scheme submitted to it under subsection (1)(b)”,*
1926. which is the subsection that we are talking about. Fair enough, subsection (4) goes on to state:
- “unless ESA determines that the scheme does not comply with the statutory requirements.”*
1927. I am not being hostile here; I just want to get to the bottom of this. The scheme that you referred to a few moments ago, which you had some advice from CCMS about and with which you are satisfied now, does it breach statute in any way?
1928. **Mr Mullan:** No, it had to be signed off by the permanent secretary.
1929. **Mr Lunn:** Therefore, it complies with the necessary statutory requirements.
1930. **Mr Mullan:** Yes.
1931. **Mr Lunn:** If you offered that same scheme to ESA, it would have to accept it. It says so here.
1932. **Mr Mullan:** I do not wish to appear negative, and I am happy to be enlightened —
1933. **Mr Lunn:** I am not a lawyer —
1934. **Mr Mullan:** But you have studied the legislation, I am sure, ad infinitum, Trevor. On how this will pan out, we have a feeling that ESA will be the primary reference point for those schemes. ESA will provide the model scheme. Therefore, the use of the words “primacy to ESA” —
1935. **Mr Lunn:** You do not have to use the model scheme. You have your own scheme already, if it complies with statute.
1936. **Mr Mullan:** I think that that has to be tested in law.
1937. **Mr Lunn:** It says so here.
1938. **Mr Mullan:** Perhaps my reading and interpretation is more pessimistic than yours.
1939. **Mr Lunn:** The model scheme is there for schools that feel that they need to avail themselves of a model scheme, and it is the basis for the scheme that they may so submit. The legislation gives schools the right to use or not use a model

- scheme, use part of it, just draw on it, or draw up their own. It is pretty flexible. It is a change for you in your situation to have an authority that you must answer to in some circumstances.
1940. **Mr Mullan:** That could be a good thing. We are very keen on accountability. It keeps us fresh and on our toes. Everybody has a boss at some stage. However, using the word “primacy” in our submission is indicating our thoughts that ESA will be controlling.
1941. **Mr Lunn:** Yes, you do. A lovely phrase has come to light, and I am not sure that I have heard it since Patton was alive — General Patton rather than Chris Patten. “Command and control” is now the buzzword for all this. Again, I remain to be convinced that that is the point of this.
1942. I want to ask you a couple more things. What is the effect of the Catholic certificate that people make so much of, given that all teachers in Catholic schools will not have it? What extra qualification does that certificate give your teachers?
1943. **Mr Mullan:** In primary schools, it is about sacramental preparation. Therefore, a child between the ages of four and 11, who has Catholic parents and goes to a Catholic school, will be prepared for three sacraments.
1944. **Mr Lunn:** Therefore, the certificate enables —
1945. **Mr Mullan:** The grounding that that certificate gives you is very helpful. Many years ago, the sacrament of confirmation was moved to 11 from 12 years of age, and, as such, confirmation was back to being made in primary school. However, the three sacraments that children are prepared for by their teacher in a class group are very important to the Catholic faith.
1946. **Mr Lunn:** That is fine. We have confirmation, too, you know. I am just curious as to what the effect —
1947. **The Chairperson:** Some of us.
1948. **Mr Mullan:** One of the effects —
1949. **The Chairperson:** Some of us do not. *[Laughter.]*
1950. **Mr Lunn:** I declare an interest as a baptised member of the Church of Ireland.
1951. I want to move on to a couple of other things. You mentioned clause 38 and the duty of the board of governors to achieve high standards. What is it about that that worries you? Is that not already a duty of the board of governors?
1952. **Mr Mullan:** We referred in our paper to the partnership between the trustees as the submitting authority and the board of governors to agree for the board of governors to hold the principal and senior leadership team accountable for standards. That is what we meant, Trevor.
1953. **Mr Lunn:** All right. I am reading it again. I thought that you were worried about the second part — the co-operation with ESA.
1954. **Mr Mullan:** No.
1955. **Mr Lunn:** You are not worried about that?
1956. **Mr Mullan:** No, no.
1957. **Mrs C McCann:** You started your point by saying that ESA is coming. We know that it is coming, and we just want to make sure that it is as good and as helpful to everybody across the education sector. We believe that some of the things that we have currently work very well with the system, and others also believe that they work very well, and we do not want to lose what is very good. We know that the ESA is coming; there is no query about that.
1958. **Mr Lunn:** I am happy to hear you say that.
1959. **Mrs C McCann:** I clarified that the last time; it is a given.
1960. **Mr Lunn:** I do not see any attack on any sector here. I do not see any attempt to remove in any way any aspect of the ethos of particular schools, and I would resist that. That applies particularly to Catholic schools, let us be honest. There is a small adjustment to your level of independence, but I am glad to hear

- you say that it may, in some aspects, be beneficial. I will not bang on, Chairman.
1961. **Mr Rogers:** You are very welcome. Carol said that the commission recognises their very successful schools. When the issue came up of how voluntary grammar schools would be represented, a member of the commission said that if he were on the board, he would be representing primary schools that are non-selective and grammar schools. Carol, you said that you could see it being negated as we go forward. I want to tease out what sort of engagement you have had with the commission on this. Moreover, if this is about having the best deal for parents and children across the North, and taking the very good points that you made about the voluntary principle, do you see your interests being most effectively served by your being under an umbrella group, such as, as the commission indicated it would like, changing the word “maintained” to “Catholic”? Or, do you see your interests best served by a GBA-type group?
1962. **Mrs C McCann:** The commission was set up with a particular purpose, which was to carry out the post-primary review (PPR). That has been our engagement with the commission heretofore, and that was where it saw a change in the Catholic school estate and planning for the future. That has been our only connection with the commission other than that we have trustees who are the owners of the schools, some of whom are represented on the commission. Heretofore, however, we have had no particular connection. I became principal of a grammar school only in 2007, and that was the time that the commission was being set up. It was specifically to plan forward for the PPR, which I presume you are all very familiar with already. Up until now, that has been my only connection with the commission.
1963. **Mr Lambon:** Discussions with the commission are ongoing. Some of the project areas are still unfinished, so those discussions are yet to be determined. We are involved in those as much as any other school.
1964. **Mr Rogers:** Do you firmly believe that maintenance of the voluntary principle and being part of the GBA, which wants representation as a sectoral body and representation on the board, delivers the best package for children?
1965. **Mr Lambon:** We firmly believe in the voluntary principle. We are not necessarily as hung up on putting ourselves into umbrella group a, b, c or d; we can manage independently, and we can come together and share advice. We take advice and guidance and direction from the trustees.
1966. **Mr Hazzard:** Thanks for your briefing. I take your point about accountability with the audits. To be fair, it is one thing to be accountable through audits and another to be accountable to the legislature. People might say that taxpayers are paying for this and that they should be able to have a say. That is especially the case if you consider employment matters, where you are the employing authority.
1967. I am thinking in particular of the classroom assistants’ dispute, where, perhaps it is fair to say, all political parties more or less supported the classroom assistants. However, it was very difficult to resolve those issues in the voluntary sector because it was felt that we had no control over and could not support the terms and conditions of employees in the voluntary sector. I wonder how we can strike the right balance in that regard. I know that there are people who are worried about that.
1968. You spoke about the devolved Assembly, but surely that irony can be turned on its head when it comes to accountability. This Assembly should be able to hold people to account in order to protect workers’ rights. What are your thoughts on that?
1969. **Mr Mullan:** We have no problem with the legislature holding us to account; in fact, we would say that we would almost demand that. Chris used the example of the classroom assistants’ difficulties of a few years ago, which may still linger in some places. That was not an issue in

- the Catholic grammar schools, although I am not trying to apportion blame elsewhere.
1970. One of the things that we adhere to clearly in my school is that when we look at an NJC scale that an education and library boards pays, it would be better, in the interests of fairness, justice, truth, integrity, honesty and respect for people at least to pay the same. If you are not doing so, you are not being honest, truthful and respectful to those people.
1971. That gets wrapped up a bit in the issue of ethos. Sometimes, ethos is totally intangible and you wrestle with it; is it an ambience or an atmosphere? No, it is not. There are times when you have to ask yourself whether you are acting honestly and truthfully and with integrity. The difficulty in some cases with the classroom assistants' dispute — who were on very low wages in some cases — is that when you look behind the scenes, you will find that in some grammar schools they were better paid and had better terms and conditions than they had when the education and library boards and the Department decided to try to standardise everyone.
1972. Earlier, I used the example of the bursar in my school and compared him to his counterpart in David and Carol's schools. That applies as well. Those people had to be protected by us because we had agreed with them, on an individual basis, that their employment and their hours with us were worth more than, perhaps, the standard payment.
1973. **Mr Lambon:** I will reiterate a number of those points. In my previous school I spent three days on a job evaluation exercise through the education and library board. We engaged in that exercise and were very keen that people were paid the right money for the right job, because classroom assistants in particular are absolutely invaluable.
1974. The point that I made about an auditing perspective was probably a little bit more subtle than, perhaps, it looked in the first instance. I wonder, on occasions, when I read the deficits that some schools have that I would not get away with that. There are no circumstances in which my governors would approve a deficit of 1%, 2% or 3%. I read that some schools are £300,000 or £400,000 in debt.
1975. My financial accountability to my governors is looked at regularly, on a monthly basis, whereas in the non-voluntary sector that might be done quarterly or annually. As you well know, there are some quite significant deficits, but that is not the position in our schools.
1976. **Mr Mullan:** I recall, Chris, a former permanent secretary using a rather crude phrase. He said that in bangs for your bucks there was nothing like a voluntary grammar school. That has to be borne in mind. There is a model there that can travel and can be transferred.
1977. **Mrs C McCann:** The last time I was here, I said that rather than saying that we want to hold it all for ourselves, we want to be available to more people. That was said by the commission or CCMS last week as well. For those who can manage it, it is an enviable model.
1978. I suppose that we would not be making such a fuss about it, or make it appear to you that we were doing so, if we did not believe that it was worthwhile. None of us wants to retain in our schools things that we felt were not valuable, because all of us want to do the best for the children. We just want clarity.
1979. We want to ensure that we hold onto the best things in the system. I know that that is what everybody round this table wants; otherwise you would not be spending time on it. I want to put on record our great appreciation of the time that you have given to ensuring that everybody's points are heard. You hear conflicting points of view, and I am sure that it is sometimes hard to understand where the nuances lie. However, as I said the last time we were here, we come with quite a simple message.
1980. **Mr Hazzard:** What is your response to those who say that voluntary grammars are not accountable to politicians?

1981. **Mrs C McCann:** Of course we are; we have to be. We have to live within budget.
1982. **Mr Mullan:** We want to be, and we must be. It is public money — it is not our money. That weighs heavily upon us in the day-to-day management of a school. We try to squeeze value out of every last penny, because we know that we can provide opportunities for young people.
1983. **Mrs C McCann:** Staff might ask for things, or we might have an expectation of something that we can do. It is always very important for me to be able to say, “At the end of the day, this is not my money; it is public money.” Every decision on every penny has to be based on the fact that the money belongs to the Department of Education; that is where it comes from. It is about ensuring that as much of that money as possible goes towards improving the day-to-day lives of the children in our school. As we all know, children get only one chance at education. The point was well made by the Minister some years ago that you must use whatever money you have in your school to improve children’s lives. Then, if you have a bit extra, you can put in that bit extra to help particular areas. That is something that we all do.
1984. **Mr Hazzard:** We often get bogged down in what will be the disasters and all the negative sides of the Bill. What do you feel will be the benefits?
1985. **Mr Mullan:** The Bill could bring about a sea change; it could drive up standards and improve the lives of young people enormously. I go back, Chris, to the omission of skills, because that is what we need to be at. In drafting the Bill, a tremendous opportunity has been missed to put in place in schools a more rigorous approach to the development of skills, competencies and attributes. The CBI’s recent report on education, which is fabulous, shows what schools are about.
1986. Catholic grammar schools are not saying that schools are just about creating a workforce; they are about the development of young people, their values and character, and their knowing the difference between right and wrong. In my school, it is not about who comes out with a slew of grade As; it is about whether they can make a contribution to their community and society. The Bill could do some of that, although it would have had much more potential if it had a section on skills. Perhaps that will come through in the regulations. It is possible that the ESA will turn its attention to that once it has been established. However, it would be better if the primary legislation gave the ESA a helping hand with it.
1987. The Bill is positive. However, I reiterate that the ESA must be light, flexible and avoid being the largest employer in western Europe.
1988. **Mr Lunn:** What about that?
1989. **Mr Mullan:** Trevor, you told me earlier that the ESA was not going to be the employer and that we would be the employer.
1990. **Mr Lunn:** I did not say that. The ESA is to be the employer; that is stated clearly. For that reason, it may well be that you no longer need to carry employer’s liability insurance. However, you will have day-to-day control of all decisions regarding employment, and unless you breach your own scheme of employment, the ESA cannot interfere.
1991. **Mr Mullan:** We have to be careful that it does not become such a huge organisation — or a monolith, as we say in our paper — that it is an encumbrance or a hindrance.
1992. We all know about bureaucracy; empires are built by bureaucrats, and that is what we have to avoid here. One philosophy or doctrine that the Bill should incorporate is the idea of subsidiarity, whereby decisions are taken at the lowest possible level and nearest to the point of delivery. To us, that is the board of governors, the school’s senior management team, the parent-teacher association and the pupils.
1993. The Bill certainly has potential, but the proof will be in its outworkings. We are aware of sectoral support bodies, and

- papers are being written about them. There is very little mention of sectoral support bodies apart from at clause 63. There will be a power play among sectoral support bodies to see what they can do and how far they can go inside the parameters of the legislation to exercise not just advocacy and influence but control. That is where we have to be careful in respect of sectoral support bodies.
1994. **Mr Lambon:** Another aspect that might be very positive would be for a greater percentage of the resources to be delivered at the coalface. Fifty-six or fifty-seven per cent of our education budget is in schools whereas, in England and Wales, the figure is 80%. I would have hoped that that was the guiding principle. I do not need to tell you that schools are in a difficult enough financial position, so I hope that that will come through in the Bill.
1995. **Mr Mullan:** On the issue of finance, I think that the clauses on CCEA would be enhanced by asking CCEA to be a non-profit-making body. Some of the biggest bills that our schools face are those to CCEA. My bill to CCEA might be running to £60,000. There is nothing in the common funding formula that takes account of how many children in my school do examinations. I want children to do more examinations, yet I am not being funded on that basis. If schools and pupils do fewer examinations, the CCEA bill is smaller. Therefore, resources are being diverted from our budget into CCEA and away from the classroom. CCEA has to make a profit, but I feel that it should be a non-profit-making body.
1996. **Mr Kinahan:** Carol, you touched on what you do through area-learning communities to help other schools because you and others have a mass of skills. Can you expand on that?
1997. **Mrs C McCann:** I am in the west Belfast area-learning community, which meets regularly. Indeed, there was a meeting this morning, which I missed because I am here. We work very closely with the post-primary school beside us. We deliver quite a lot of A levels to that school, and some of our girls take a small number of A levels there. When you are linked to a tight timetable, it is very difficult to work with other schools. I think that we all find that.
1998. In the area-learning community, we often talk about the fact that many of the things happen because they work. We spend a great deal of time in the area-learning community on things that may be irrelevant to other schools. It is through school-to-school development and good relationships with one another that we work best and learn and benefit most. Engagement with other schools is always beneficial, and we also work closely with our local primary schools.
1999. One of the big things that I mentioned last time I was here is specialist schools, which David has experience of. I know that specialist schools are not going to come back; however, they were a good vehicle for working with other schools. They provided extra finance and allowed us to work closely with a bigger number of primary schools. We have tried to continue that using our own resources. We may have levels of expertise where working with primary schools, particularly in areas of deprivation, would enhance them. We do not want it to be a case of our being there to serve the area-learning communities; they should be there to serve us. Perhaps the model is not always helpful.
2000. **Mr Lambon:** I am a strong advocate of learning communities; they are a great way of beginning the journey towards a shared future. We work very closely with three or four schools in north Belfast. Pupils move between schools for A-level subjects. It is something that we hope to expand.
2001. **Mr Mullan:** Similarly, we share courses with Lagan College, Grosvenor and other neighbouring schools. In our area-learning community, we have two special schools, Longstone and Tor Bank, with which we work very closely. Students are exchanged, and staff training and courses are delivered across the

- schools. The financial reductions of last year, which were necessary — the 5% cut — slowed things down a bit, but it is moving well and a great deal of good has come from area-learning communities. That will enhance area planning in the future.
2002. **Mrs C McCann:** Chris and Trevor said that there is always a negative image. We sometimes forget how far we have travelled in education, because schools previously worked very much in silos and did not work at all or even have much discussion with other schools. Much more of that is happening, even in the past five or six years. We are not change-averse, and we realise that the world never stays the same. If you bring in change, you need to provide finance to help. That helps things to happen and to move on more quickly.
2003. **The Chairperson:** I know that it is not in the confines of the Bill, but the removal of the entitlement framework funding will have a huge impact on the viability of area-learning partnerships, and schools will become more insular and will probably go back to where they were before they started the journey. We are very conscious of that and are very concerned about it. We want to protect but expand the model. However, if you remove the funding, schools will contract. It is a challenge to try to avoid that situation.
2004. **Mr Lunn:** One of you mentioned clause 62, which is about tribunals. What was your reservation about that?
2005. **Mr Mullan:** As I said in the introduction, it is a cumbersome mechanism for resolving a dispute. As other submissions to you have said, unless the outworkings of that — through the courts and so on — are tidied up and made simpler, clearer and more useful, it could lead to difficulties further down the line.
2006. **Mr Lunn:** That is what I am asking. It says that the Office of the First Minister and deputy First Minister shall make provision for the establishment of a tribunal but that the regulations will provide for the members to be appointed by the Department. OFMDFM will not put a tribunal together — and, dare I say it, thank goodness — but the Department of Education will. If that tribunal was not there and the ESA had the final say, you would not be very happy about that. The original provision says that if the ESA does not agree with your scheme of employment, it can ask you to reconsider it. You can do that and send it back to it, and it will ask you to reconsider it. Eventually, it has to go somewhere. It goes to a tribunal that is established by the Department of Education, and I would have thought that, in practice, that is not very different from what you do at present. It might not be that big a deal.
2007. **Mr Mullan:** No. The devil is in the detail and the outworkings. That is what we are getting at.
2008. **The Chairperson:** I have a final question. Who is the submitting authority for the scheme of management and employment schemes in your school?
2009. **Mr Mullan:** A revised or new scheme of management must be submitted to the permanent secretary of the Department of Education by the trustees.
2010. **The Chairperson:** So, the board of governors discusses that. Does it liaise with the trustees?
2011. **Mr Mullan:** The board of governors and the principal, who is secretary to the board of governors, will write the scheme of management. In reality, the principal writes it and brings it to the board of governors, which scrutinises and amends it. The trustees will then stamp it, and it is sent to the Department for its perusal and stamp.
2012. **The Chairperson:** Are you happy that that arrangement will continue?
2013. **Mr Mullan:** The same arrangement continues. It has worked well in the past.
2014. **The Chairperson:** Thank you very much, Dermot, David and Carol.

2015. **Mrs C McCann:** Thank you very much.
We appreciate your time, which we know
is precious.
2016. **The Chairperson:** We look forward to
continuing to work with you.
2017. **Mr Mullan:** We wish you well in your work.

16 January 2013

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
 Mr Pat Sheehan

Witnesses:

Mr Chris Stewart *Department of Education*

2018. **The Chairperson:** I ask Chris to come before the Committee. There are a number of things that emanate from that. One of the first things, which was a very telling point that was made by Dermot, is: where are the skills in the Education and Skills Authority (ESA) in relation to the Bill? Perhaps there is a concept, but how does it work out in the legislation?
2019. **Mr Chris Stewart (Department of Education):** Chair, forgive me for delving back a little bit into the history of this. The original proposal under the review of public administration (RPA) for an education and skills authority envisaged it taking a greater range of functions from the Department for Employment and Learning (DEL) than is now the case. The Minister for Employment and Learning at the time and the Executive changed the view and decided not to transfer formally those functions or responsibilities to the ESA. The question then arose: should the ESA still be called the ESA? The view of the present Minister and his predecessor was that “skills” ought to remain in the title to reflect the fact that the skills agenda, which is extremely important, is not the sole preserve of DEL. Post-primary schools, in particular, play a very important role in the delivery of the skills agenda and in equipping young people and providing for them the educational paths that lead them to a skills-based role in our community. Therefore, it was felt very important that the ESA should recognise its responsibility in relation to the skills agenda and not leave it solely to DEL.
2020. The point that was made is right: there are not specific provisions in the Bill that deal with skills.
2021. **The Chairperson:** Therefore that is the case.
2022. The other two issues were in relation to Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and the comments that are made in the submission, and the suggestion that clause 33 could be amended to address the anomalies between 3 and 10 of the heads of agreement.
2023. **Mr Stewart:** I am not certain that the suggestion around clause 33 would affect that situation in any way. The proposal around the inclusion of a reference to “agreement” was an attempt to deal with the potential for any disagreement between a board of governors and the trustees, as the submitting authority. The issue is one of policy. What is proposed through the inclusion of the word “agreement” is a form of joint authority. There is no intrinsic reason why you cannot have joint authority between trustees and a board of governors over any matter. The question that I, and the Office of the Legislative Counsel, if it were trying to draft that, would ask is: what happens if there is not agreement? Where you have joint authority, you need to deal in law with a situation that arises in which you do not have agreement or where joint authority cannot be exercised. At the end of the day, somebody has to be the submitting authority and make the final decision as to what is entered on behalf of a school. That is why I do not think that the suggestion goes far enough

- in answering how that would work in practice.
2024. To go back to the other matter around TUPE, a number of phantoms are being seen that do not actually exist. TUPE preserves the terms and conditions of staff who will transfer from the employment of a board of governors to the employment of the ESA. If they are highly paid bursars today, they will continue to be highly paid when they become employees of the ESA, because TUPE protects that. We have, at least for teaching staff, although less so for non-teaching staff, regional agreements on terms and conditions that are negotiated between management side and trade union side. As colleagues from the Catholic Heads Association rightly said, the management side includes representatives of voluntary grammars. Indeed, for many years, it was chaired by a representative from the voluntary grammar sector. As is the case today, it is for boards of governors, as the managers of schools, to decide how those agreements are implemented in their particular schools. That will continue to be the case. It will be the board of governors, not ESA, that will decide what the salary of the bursar will be in the future. If the board of governors feels that the content of the bursar's job requires a particular salary, that will be its decision to make, not ESA's.
2025. **The Chairperson:** Is there not a bit of an issue in that TUPE applies on the day of transfer and that thereafter any decisions will be subject to review? For any new scheme of management, any new employment scheme or whatever that you have dealt with, TUPE will be applicable on the day of transfer, but what happens on days two, three and four?
2026. **Mr Stewart:** On days two, three and four, if the intention of the board of governors is to change the terms and conditions of any member of staff, it will have to go through the normal processes for doing so.
2027. **The Chairperson:** You may have mentioned it, but does amended clause 33(b)
- deal with the contradictions about the selection, retention and dismissal of staff?
2028. **Mr Stewart:** I do not think that it deals with that issue. I was interested to hear the description of the scheme of management of one of the schools; I forget which one. The description was that the scheme of management at present sets out the employment arrangements for that particular school and sets out how those decisions were made on the selection and appointment of staff.
2029. Of course, one of the requirements in the Bill is that any scheme of employment must conform with the scheme of management. So, if the scheme of management for that school says that these are matters for the board of governors, the scheme of employment must also say that these are matters for the board of governors. Indeed, if it did not say that, ESA could not approve it. The responsibility for those decisions is, quite simply, not going to change for that school. If decisions are made today by the board of governors, they will be made after the Bill becomes law by the board of governors. If that board of governors is capable of filling a post in six days now, it will be capable of filling a post in six days after the Bill becomes law, because it will still be the board of governors that does that.
2030. **Mr Lunn:** Is there a direct relation to the scheme of employment?
2031. **Mr Stewart:** Yes, the scheme of employment must match the scheme of management. The two things cannot be contradictory. In any case, some of that protection is built into the Bill, where there is a requirement that schemes of employment place certain responsibilities with boards of governors, and only in relation to what are termed specified posts where the board of governors or the school decided that ESA would make the appointments would the functions be in any way delivered by ESA.
2032. This is an area where I absolutely understand the concerns that stakeholders

- have and the sincerity with which they argue those concerns, but a careful reading of the Bill, I think, reveals that what they fear is simply not in the provisions.
2033. **Mr Lunn:** Where does it say that?
2034. **Mr Stewart:** I am sorry, Trevor, I cannot quote it off the top of my head; I will need to check it and come back to you. There certainly is a requirement that the scheme of employment and the scheme of management should match. There is, indeed, a further requirement that the scheme of management has to match any instrument of governance of the school. For example, if a school was founded by a charter many years ago, and that charter is still part of the governance arrangements of the school, its scheme of management has to reflect that.
2035. Sometimes, the accusation is that we are undoing the history of these schools. Far from it; we are actually protecting it.
2036. **Mr Kinahan:** Chris, you will have noted all though this that they were talking about the speed, the delays and how they can do things quickly. The one thing that still bothers me is when it comes to tribunals. To settle a dispute, if it does not get to a tribunal — we mentioned article 100 — is there something that we can put into the Bill to make sure that things are dealt with quickly rather than being stuck with a dispute that goes on for ages? What is the normal length of time for an article 100 dispute being resolved?
2037. **Mr Stewart:** I do not think that we have had a sufficient number of article 100 disputes to give you an average figure for that. I hesitate to say that it depends on the administrative efficiency of the Department. Perhaps that is something that the Committee has confidence or perhaps not. I can say with certainty that an article 100 procedure is likely to be shorter and quicker than a formal tribunal procedure. It is the case, and I think we would have to acknowledge it, that tribunals are not quick mechanisms. In the first place, it would be much better if we could avoid disputes completely. However, if there are disputes, they need to be resolved by the quickest possible route, which is likely to be the article 100 procedure.
2038. **Mr Kinahan:** Are you happy with that? You do not think that we should put something else in the Bill such as an arbitration system?
2039. **Mr Stewart:** I think that the difficulty with building in more and more layers of protection and more and more — again, if I may use this phrase — courts of appeal or mechanisms of appeal is that they all take time. The simplest and straightest route for all this is for a board of governors, a submitting authority, to draw up a good scheme, have that scheme approved and then operate according to that scheme. If that is done, there will not be any disputes.
2040. **Mr Kinahan:** Thanks.
2041. **The Chairperson:** There are no other questions. Chris, thank you very much.
2042. **Mr Stewart:** Thank you, Chair.

23 January 2013

Members present for all or part of the proceedings:

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

Witnesses:

Dr Christina Byrnes *Northern Ireland Voluntary
 Grammar Schools'*
 Miss Elisabeth Hull *Bursars Association*
 Mr Shane McBrien
 Mr John Robinson

2043. **The Chairperson:** Thank you very much, and please accept our sincere apologies for overrunning. Thank you for coming and for the paper that you have submitted. I just ask you to make your presentation, and then members will ask questions.
2044. **Dr Christine Byrnes (Northern Ireland Voluntary Grammar Schools' Bursars Association):** OK; thank you very much, Chair, for the opportunity to make representation on the Education Bill. I am the chairperson of the Northern Ireland Voluntary Grammar Schools' Bursars Association. With me are my colleagues John Robinson, who is vice chair of our association and from Methodist College in Belfast; Elisabeth Hull, from Belfast Royal Academy; and Shane McBrien, from St Malachy's College in Belfast.
2045. The members of our association work in the 51 voluntary grammar schools in Northern Ireland, encompassing Catholic and non-denominational schools and single-sex and co-educational schools. The review of public administration (RPA) in education in Northern Ireland focuses on promoting equality, raising the quality of education and improving educational standards and outcomes. The associated establishment of the Education and Skills Authority (ESA) was due to have a vital role in providing high-quality and cost-effective support and ancillary services to schools, thereby releasing resources directly to front line services. It was also envisaged that the new authority would have a light touch, giving maximum delegation to schools in order to allow them to develop in a way that they would be comfortable with and within their level of competence. As it stands today, however, ESA, through the Education Bill, goes well beyond the amalgamation of the functions and support services that are currently performed by a number of organisations, including the education and library boards. The current Bill also gives the impression of centralisation of the administration of education, with little or no sign of delegating authority to schools. That direction of travel is in contrast to education in other parts of the United Kingdom, where the focus is on maximising local autonomy, and also when compared with other areas of public administration in Northern Ireland, such as the recent announcement in respect of the Housing Executive.
2046. A number of areas in the Bill cause us great concern and have raised questions among our schools. I will cover the lack of delegation and loss of autonomy. I will pass to Elisabeth, who will discuss the financial arrangements. Shane will talk about the employing authority. John will discuss the representation of our sector and preparatory departments. Finally, I will summarise our remarks. If you would like to ask questions, we would be very happy to take them.
2047. If the Education Bill is implemented, it will result in significant erosion in the autonomy of the boards of governors of voluntary grammar schools. The Bill also seems to miss the opportunity

- to delegate functions to schools in order to gain greater responsibility and accountability while also achieving better outcomes at the front line. As they stand, the proposals are in marked contrast to the initial RPA policy papers, which detailed that schools would take on greater responsibilities and become more autonomous. A recurrent theme was maximising supported autonomy for schools. In the strategic review of education that was undertaken by Sir George Bain, the principle of autonomy is supported to empower schools. We, too, support increased delegation together with greater autonomy for all schools. Why has the Bill has moved so far away from those original intentions?
2048. Currently, the boards of governors of voluntary grammar schools are the employers, and they make all related decisions. Under the Bill, ESA will become the employer of all staff. That is a significant removal of power and a clear departure from the heads of agreement, which included, in paragraph 10, the statement:
- “nothing in the new arrangements would undermine the following principles; ...*
- c) Where it is already the case, Boards of Governors will continue to employ and dismiss members of staff.”*
2049. Every school would be required to have an employment scheme that is approved by ESA. The Bill gives the Department unrestricted power to produce regulations for the form and content of an employment scheme. That would give the Department power to insist on a standardised employment scheme being adopted by all schools, thereby potentially diluting the autonomy of boards of governors.
2050. Further issues relate to those schemes. For example, it is stated that a scheme may include provisions for the general management of the staff and procedures to be followed with regard to any matter that is dealt with in the scheme. What does that mean? It is quite an ambiguous statement on the provisions that relate to appointments, particularly to specified posts. What exactly is a specified post? We know that it is to be defined in the scheme, but who decides that?
2051. We know that boards of governors may refer to the tribunal for a test of compatibility with the heads of agreement, although we note that the heads of agreement itself is not defined in the legislation. We foresee that as being a time-consuming and unsatisfactory process with resource and cost implications. The heads of agreement clearly specifies the principle that, where it is already the case, boards of governors will continue to employ and dismiss members of staff. Why is that simply not included in the legislation when the principle has been accepted? In our view, it is imperative that the employing authority role of boards of governors is enshrined in primary legislation.
2052. Clause 22, on the ancillary powers of ESA, worries us. It states:
- “ESA may do anything that appears to it to be conducive or incidental to the discharge of its functions.”*
2053. That includes the power to enter into agreements. That, essentially, gives ESA unlimited powers in our schools. What is the purpose of that clause, which, again, removes power from boards of governors? Boards of governors are unlikely to give of their time and expertise voluntarily when, in fact, the controlling body is ESA.
2054. Clause 20 states:
- “ESA may enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school.”*
2055. There is no obligation to obtain the consent of the boards of governors prior to entering into such contracts, and that is clearly not appropriate when the boards of governors or trustees are the owners of the premises. Does that mean, for example, that ESA could decide which fire alarm services we use or which contract cleaning firms are used by a school? That, again, is a further erosion of the autonomy of

our boards of governors. The questions that must be asked are these: does such centralisation benefit schools? Does history show that centralisation works in education? It certainly has not been tested on such a massive scale in western Europe.

2056. In the current format of the Bill, area planning is to be the sole responsibility of ESA. ESA has an obligation to consult sectoral bodies in area planning, but ESA only has discretion, not an obligation, to consult boards of governors of grant-aided schools in that area. It is essential that boards of governors are involved in the consultation process relating to the provision of education for schools in their area, and that should be amended in the legislation. We note with concern the comments made by the Minister in an article in 'The Irish News'. When looking ahead at the goal of an academic selection-free system, he said:

"We will be in a different place. Area-planning will have kicked in. We will see a rationalisation of our schools estate. ... No school will be able to plan on its own in terms of its future."

2057. Again, we see that as a direct threat to the ethos of our schools and to the autonomy of our boards of governors.
2058. I will hand over to Elizabeth, who will talk about financial arrangements.
2059. **Miss Elisabeth Hull (Northern Ireland Voluntary Grammar Schools' Bursars Association):** As bursars, we are responsible to our board of governors for the management of our school's finances. Therefore, you will not be surprised to hear that the financial arrangements are of great interest to us.
2060. I will look first at direct funding provided to schools. We support one of the original key concepts behind ESA, which is to increase the autonomy of schools. We note with interest that Northern Ireland now moves in the opposite direction to England and Wales, where over 80% of resources are allocated directly to schools. In England, there is also the increase in academies, which

have greater delegation of functions and are much more autonomous than the schools that were there before. In 2011-12, 59.4% of the Department of Education's resource budget in Northern Ireland was allocated directly to schools. That proportion has steadily declined and is due to reach 58.4% by 2014-15. We continue to see more funds diverted from front line services. By the end of the Budget period, 2015, we are told that, through the establishment of ESA, the Department will achieve savings of £40 million. It was initially estimated that the savings would be £20 million. We have yet to see any detail of how those additional savings will be achieved. Our real concern is that if those savings cannot be achieved, how will that affect the money that reaches schools? We would welcome the opportunity of reviewing how those savings have been calculated, particularly as the projected savings have been doubled. What is in the Bill does not convince us that there will be any appreciable improvement to the front line funding of schools.

2061. Secondly, with regard to accountability, a large proportion of the funding for voluntary grammar schools is delegated at school level. We have high levels of accountability and are subject to scrutiny by independent internal and external auditors annually. Internal and external audit reports are submitted to the Department of Education, along with financial returns required by the Department. In fact, this year, some of our schools have undergone three audits in one year. That increased responsibility brings a sharp focus on financial efficiency and management. Our boards of governors are responsible for ensuring that our financial plans are appropriate and viable, and we are, therefore, able to react swiftly to ensure that we live within our means. That level of autonomy over our funds works well, provides value for money and allows our schools to be reactive to the needs and priorities of our individual schools. Indeed, Sir Robert Salisbury's recent independent review of the common funding scheme recommends:

“The Department of Education should explore the practical implications and legislative, or procedural changes required to allow any school to adopt the systems of financial management operated for voluntary grammar and grant maintained integrated schools.”

2062. What will be the arrangements for audit and financial reporting in our schools under ESA? Will we continue to arrange our own audits, or will we be subject to audit by the Northern Ireland Audit Office? Many of our schools are registered charities and have specific audit and accounting requirements. Some of our schools are limited companies, so they, too, have statutory obligations, including audit requirements.
2063. Thirdly, with regard to insurance arrangements, if our boards of governors are no longer the employers, our schools would no longer carry employer’s liability insurance, and that obligation would fall to ESA. If that is the scenario, we have some questions. Will ESA become more involved in the management of schools’ health and safety policies and procedures? Will ESA be involved in taking decisions on risk assessment and have the final say on which activities employees can become involved in, for example, extracurricular activities such as trips, sports, etc? The breadth of opportunities available to pupils will potentially be diminished, and pupils will be the losers.
2064. **Mr Shane McBrien (Northern Ireland Voluntary Grammar Schools’ Bursars Association):** I will take up the point about the loss of employing authority.
2065. The key feature of a voluntary grammar school is that the staff are directly employed by boards of governors, which have an intimate knowledge of the needs and priorities of their schools. A large proportion of our funding is delegated at school level. As the employer, with total control of finances, our boards of governors have the power to react quickly and efficiently without the need to involve additional bureaucratic layers. For example, staff vacancies are filled without undue delay, ensuring the continued smooth delivery
- of the curriculum to our pupils. I believe that this direct link as employer is key to preserving the ethos of our schools, and it is also raising standards. Boards of governors make those decisions in the overall context of managing the financial affairs of the school. That continuity of employment authority is not reflected in the Bill as it stands.
2066. We foresee practical issues with the loss to our schools of employer status. Look at the terms and conditions of employment. The issue of terms and conditions for staff who transfer to ESA is in question. It has been stated that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply. However, there is no time limit on TUPE. ESA can negotiate different terms and conditions at a later stage, as the employing authority. Across our schools, there are a range of groups with varying terms and conditions, particularly among non-teaching staff, but also among teachers who have been allocated responsibilities. For example, the head of a curricular department — say, for example, biology — may be on two teaching allowance points in one school and on four points in another. Under the single employing authority of ESA, there is significant potential for a raft of claims to be made under the Equal Pay Act (Northern Ireland) 1970, in all probability making it necessary to align grades at the highest level. In the example that I cited, the difference in cost for one teacher on a different pay scale, could be in excess of £6,000. We wonder whether those costs have been taken into account in the projected savings of £40 million.
2067. There will also, inevitably, be the drive to have generic jobs across all schools, which will create generic organisational structures. This one-size-fits-all solution is unlikely to be the most appropriate for all schools. As to employment relations, as the employer, there is a close relationship between the board of governors, principal and staff. That is critical for the smooth running of the school and to enable a timely response to issues such as staffing matters

- or grievances such as disciplinary or managing staff attendance. If the board of governors is no longer the employer, will ESA be directly involved in those matters? In employment law terms, that is almost certain. The additional bureaucracy may lead to additional costs due to a failure to complete dismissal processes in a timely manner. Who would be responsible for the costs associated with, say, discrimination or unfair dismissal claims?
2068. As to the size of the employer, according to the outline business case for the implementation of the RPA programme in education, ESA will employ over 60,000 staff, and it has been reported to be, potentially, the largest education employer in Europe. Will that really lead to streamlined services and improve the speed of decision-making? Will more money be diverted to the administration of such a large organisation and away from classrooms at a time when budgets are already under great pressure?
2069. It is a stated function of ESA that we will move to system-wide workforce planning and development. We would like to know exactly what that means for our staff and schools. The Bill gives ESA the power to transfer staff between schools, and we fear that this is not an intention of the Bill. We can only see that having a negative impact on staff morale and on the schools' ethos, as staff will lose affinity with their school. As a result of that, staff may no longer wish to be involved voluntarily in extracurricular activities such as sport, music, drama and school trips, and, again, pupils could bear the cost of such a change.
2070. **Mr John Robinson (Northern Ireland Voluntary Grammar Schools' Bursars Association):** Finally, I will deal with the representation of the voluntary grammar sector and also of preparatory schools. Our sector educates around one third of post-primary pupils, and yet there is no recognition of this in the Bill or in the composition of the ESA board. The rights of all other school sectors seem to be protected, either through sectoral bodies or having ex officio positions on the board. It seems to us to be a glaring omission that the voluntary grammar sector has been excluded from the constitution of the board or in the funding of sectoral bodies.
2071. We believe that our schools have successfully managed our staff and budgets since 1947. There is a significant amount of experience and expertise, which would be brought to the table and which would allow representation of our sector's needs and priorities. That could be taken across education in Northern Ireland as a whole. There must be inclusion within the legislation for a sectoral body to represent the voluntary grammar sector and to ensure equality between schools of different ownership, type, ethos or management arrangements.
2072. In this context, it is important to note that the constitution of the ESA board, as outlined in schedule 1, gives us cause for concern. The future control of almost every aspect of education of our children falls under the single body of ESA, with the real potential for its board being subject to the power of any one political party. Our concerns are irrespective of the political persuasion of that party. The reforms in England, with the introduction of academies, involve the removal of political control over schools by local education authorities and much greater freedom for schools.
2073. A question has been raised in relation to the governance of preparatory departments. There are quite a number of issues around that matter. Currently, prep departments operate as departments within a post-primary school and fall under the control of the board of governors. What about the staff who work in areas that receive no grant aid, such as staff in breakfast clubs or after-school clubs funded by parental fees? Who will be their employer? We can also ask the question about the teaching staff who are partially funded by the Department. I think that prep departments require a good deal of additional work.
2074. **Christina will summarise our position.**

2075. **Dr Byrnes:** We believe that the Bill does not reflect the principles contained within the heads of agreement, nor does it reflect the RPA position of maximised autonomy for schools. In fact, we believe that it significantly removes autonomy from the boards of governors in our schools. We support the need for rationalisation and the streamlining of services to ensure that more money reaches the front line. We have no detailed evidence to support the projected savings.
2076. We believe that there must be recognition of the voluntary grammar sector in the Bill and in the composition of the ESA board. We are concerned that area planning is to be the sole responsibility of ESA and that ESA has no obligation to consult boards of governors of grant-aided schools. Our fear is that our schools could be area-planned out of existence without the requirement to consult with our boards of governors and having no representation on the ESA board or sectoral representation.
2077. Finally, we believe that the direction of travel of the proposed Bill is towards almost total centralisation, which we believe will not improve our education service. We do not believe that the Bill will improve efficiency or, indeed, educational outcomes.
2078. **The Chairperson:** Thank you for that and for the written submission that you gave us. I want to try to tease out a number of things. I want to come to John's point in relation to the place of voluntary grammars on the ESA board. Is there a contradiction in the position? The voluntary grammars and you are happy with the Governing Bodies Association's (GBA) submission that has been made. You have the same position. On the one hand, you want to maximise or retain the autonomy that you have, but, on the other hand, you want to be part of an organisation that is similar in nature to an education and library board. Since 1947, you have not had representation on an education and library board. If you had the choice of retaining your current position with regard to your employment rights or having a place on the ESA board, what would you prefer? I have put that question to a number of others to get a sense in my own mind.
2079. **Mr J Robinson:** I do not know whether I would speak for all the boards of governors of voluntary grammar schools, but, speaking for myself, my recommendation would be to retain the employment rights and the other rights of voluntary grammar schools and not to take a seat on the ESA board.
2080. **The Chairperson:** It is not for me to defend the Department or the current Minister. However, to be clear, as far as I and my party are concerned, the reason the Bill is constructed as it is in relation to the board is because it replicates currently the education and library board, which protects the transferors. That is why we insisted that it was in that format. Now, there are still a lot of issues out there, but I think that, sometimes, phantoms can appear, which are not always as they seem. There has been no deliberate attempt to exclude voluntary grammars. It is recognition of others.
2081. I am very interested in Sir Bob's report. I think that it is timely and will be useful. In paragraph 24, under the section in which he deals with autonomy and financial management — which you, as accountants, are no doubt well aware of — he says that no voluntary grammar or grant-maintained integrated school:
- "As at March 2011, ... had a deficit of public funds."*
2082. In paragraph 29, he says:
- "Limited accountability has manifested itself most clearly in a pattern of school deficits. Some schools are significantly overspending their budgets. In March 2011, following a sustained period of funding growth, 147 primary and 49 post-primary schools had deficits."*
2083. We all know, of course, the huge amount of money that that accumulates to. The question is this: how is that able to be managed in one sector of schools and not in another? If you look at the viability audits, you will see that that statement is clearly at variance with what the

- Department told us. The viability audits try to give the impression that there was financial stress in every school. That is not the case. Sir Bob, in an independent report, confirms what we have always believed. The issue is that no school in your sector has a deficit of public funds. Is that primarily down to management and the fact that you have retained your autonomy with regards to the issues you are defending in your submission today?
2084. **Mr J Robinson:** I will answer that, and then let others come in on it.
2085. The nature of a voluntary grammar school is that the board of governors and management team are all held accountable, and all believe that they are accountable. There is no doubt that there are stresses; the same stresses apply to the voluntary grammar sector as would apply to any sector. We have the same difficulties; we have redundancies, changes in structure and a reduction in costs as a result of a reduction in grant aid. However, because of the structure we have and the people who are attracted to the boards of governors of voluntary grammars — who quite like autonomy, but who accept responsibility and accountability — there tends to be, for us, quite a quick turnaround where there is a difficulty. So, if a difficulty is coming forward, and we see from financial forecasts that we are going to have a deficit, the board of governors, through its structures, will quickly come to terms with that and quickly make decisions; sometimes, on occasion, difficult decisions. Look across our sector. As has happened with all sectors, there have been a number of redundancies, but it has been quite a quick reaction. We have moved from having a possible deficit to being quite close to breaking even. That is certainly the case in my school. I think that that is down to the fact that everybody feels that they are responsible for the school.
2086. **Dr Byrnes:** I agree with that. It is as a result of boards of governors being fully accountable and knowing that, when we get our financial plans and details of our budgets, there is a requirement for us to produce a three-year plan. We know what we need to work within. That plan is presented to our finance committee, and all our governors are fully aware of their responsibility to live within that budget. So, hard decisions do have to be made. There is the power to do that, and do it relatively quickly. Many of our schools have gone through that in the past couple of years, where we have had to look at cost-saving proposals and put those into action. Our governors are fully accountable, and we make the savings that are required. We have procedures that we follow; we have tendering processes and procedures that are all audited to ensure that there is maximum efficiency.
2087. **The Chairperson:** Sir Bob Salisbury's report was not the focus of our discussion, but it informs some of the discussion that we have had. Sir Bob and his team are coming next week. In recommendation 28, the report mentions voluntary grammar and grant-maintained integrated schools being able to reclaim VAT. That has been around for some time. Have you any practical advice that you can give us about that? Sir Bob's recommendation is:
- "DE should investigate the potential for these schools to reclaim their VAT from HMRC."*
2088. Anything that you can do to reclaim money from the Treasury is a valid course of action. Are we losing out? Can you explain the difficulty that that creates and say whether there is a possible solution?
2089. **Mr J Robinson:** I will certainly have a go at that. There is an allowance in the common funding formula for VAT that voluntary grammar schools incur and cannot reclaim. Therefore, because I have had only a quick skim over the report, I think that Sir Bob is saying that if that money can be reclaimed from the Treasury, it would put more money directly into the funding formula.
2090. It is quite a lot of money. I cannot remember what our figure is, but it is —
2091. **The Chairperson:** It is £4 million, we think.

2092. **Mr J Robinson:** Aye, well, I think that the VAT liability in a year is about £220,000 in our school, so it is quite a lot of money.
2093. **Miss Hull:** There is a bit of an anomaly at the moment, in that education and library boards are fully funded whereas, because it is not inbuilt in our case, we do not get fully funded for all the VAT costs. To us, there is an anomaly in the system, and that is possibly what Sir Bob is trying to address in his paper.
2094. **Mr McBrien:** A good example would be if a grammar school had some capital works ongoing. We are unable to reclaim the VAT on that, so it is a real cost to the school to fund that.
2095. **Mr Lunn:** Thank you for your presentation. I will start with an easy point. You asked about a specified post. There is a definition of a specified post in schedule 2(3)(2) to the Bill, which says simply that a specified post is a post specified in a scheme of employment. So, I hope that I can allay your fear about that. I imagine that all your schools will take up their own scheme of employment. If you do not specify any posts, there are no specified posts.
2096. **Miss Hull:** Our concern was that it was not completely clear in the legislation that that was the case, and that every school could put into a scheme of management specified posts that are to be ESA appointees. Our feeling is that the Bill is not altogether clear on that, and we would like it to be tightened a little.
2097. **Mr Lunn:** There is a mixture of things there. There are things that you have said that I agree with — quite a lot, actually — and there are things that I do not agree with. There are other things that make me wonder where you are coming from and what your fear is, and this is one of them.
2098. I do not know how to make the Bill more clear. It is entirely up to a school whether it wants to specify posts or do otherwise. There may be some schools that will want to specify certain posts for whatever reason, but I cannot imagine that they will be voluntary grammars.
2099. **Dr Byrnes:** In the past, the term “specified post” had certain connotations, in that, perhaps, it was related to the appointment of a principal. That was the initial concern, and I know that, having looked at some of the minutes of evidence, that has been raised by other groups that have come before the Committee. The point has been made that it is up to a school to declare, within its scheme of management or its employment scheme, what exactly is a specified post, and whether that can be changed by regulations that override schedule 2 to the Bill.
2100. **Mr Lunn:** I imagine that, as legislation, anything can be changed down the line. I fancy that one or two things will be changed. Schedule 2(3)(2) states:
“For the purposes of this paragraph a specified post is a post specified, or of a description specified, in the scheme.”
2101. We do not need to labour it to death. I think that you have had legal advice about all this, or you got it through the Governing Bodies Association. I will move on to another thing, because I do not know an awful lot here.
2102. You have a proposed amendment for clause 2(5). That is the one about the Irish-speaking situation. Let me shorten the existing clause for you, because I sometimes think that I can do it in shorthand.
“ESA shall ensure that its functions relating to grant-aided schools are ... exercised with a view to encouraging and facilitating ... education provided in an Irish speaking school.”
2103. You are not Irish-speaking schools. I see nothing in that. Whether I would support Irish-medium schools or otherwise is not the point. The fact is that that clause relates to only Irish-medium schools, so what is your problem? You want to change it slightly. Your proposed amendment, forgive me, states:

- “ESA shall ensure that its functions relating to Irish speaking ... schools ... [facilitate] the development of education ... in ... Irish speaking [schools].”*
2104. That is shorthand for what you are suggesting. I find that a bit odd. Have you any comment?
2105. **Dr Byrnes:** The section states:
“ESA shall ensure that its functions relating to grant-aided schools are ... exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school.”
2106. Our initial concern on reading that section was that the functions related to all grant-aided schools, not just one sector, to promote and encourage development in one individual sector. That was our concern.
2107. **Mr Lunn:** It is putting the same onus on ESA to promote, encourage and facilitate the development of education in Irish-speaking schools as it has for all other schools.
2108. **Mr J Robinson:** The question we would ask is this: why do you need it? If they are all grant-aided, surely they should all be promoted equally. That is surely what Northern Ireland is about — not to go into politics because that is your area of expertise; our area is finance and the running of schools. That, surely, is what it is about. Everybody is equal. A lot of our schools do not have that issue.
2109. **Mr Lunn:** Your amendment is not taking out ESA's requirement to facilitate Irish-speaking schools.
2110. **Mr J Robinson:** My response to that would be that, first, this group did not suggest the amendment. It came through GBA. The second issue is that those who made and suggested the amendment, as I said to our board quite recently, are paid good money to be good lawyers. Therefore, we would have to rest with that view.
2111. **Mr Lunn:** Like you, we are not lawyers. I better be careful what I say, but some things that lawyers have put before us as being the Holy Grail in the past few months have not always been exactly right. I do not think that this one is a big thing, but it is one of the ones where I am thinking, “Where are you coming from on this? What is the problem?” That clause will not in any way compel you to introduce Irish tuition in your schools. We will leave it at that; it is OK.
2112. You mentioned your fear that the great ESA machine may eventually produce — let us call it — the standardisation of terms and conditions, from salary levels and wages, right across the whole school estate. I would have to think about that. I would have to try to find where that is pointed up in the Bill.
2113. **Mr J Robinson:** It does not really need to point it up at all. Again, I do not put myself forward as a lawyer, but my understanding of life is that if you have one employer and your job value is the same in one part of that organisation as another part, you would be entitled to the same wages and salaries. In this situation, ESA is the employer — the heads of agreement has that conflict in it, but it would be one employer, and ESA is that employer — and there are slight differences in job values. I am sure that anybody who has been involved in the job evaluation in the education and library boards will know that it is not quite as straightforward as it sometimes seems. Most times — in fact, in my experience, I have not found any exception to this — all boats will float to the highest tide. Basically, the highest rate that applies, for instance, for a cleaner or a classroom assistant, will apply across the board. That is the unions doing their job. I do not have any issue with that, but that is what will happen. You are only too welcome to do the research, but I do not know of any time when there has not been significant wage inflation in that situation. I believe that the unions have already contacted quite a number of schools for copies of their terms and conditions of employment.
2114. So, for example, if my school gave 36 holiday days, including statutory days, and a board school was giving 40 days, including statutory days, you

can rest assured that there would be a very strong drive towards the 40 days. Although you might say that it is an extra four days of holiday, which is very nice, there is a cost associated with that, because four days out of the working year puts a percentage on to the wage bill.

2115. **Mr Lunn:** How does that change the situation as it is at present? Presumably, all your teachers belong to one or other of the four main unions, and those unions will continually press for improved terms and conditions. As you say, they are doing their job, and you are quite right that it is always upwards. They will continue to do that under ESA. ESA may well be just one employer, but you are going to have hundreds of schemes of employment and management, which do not have to be standardised.
2116. **Mr J Robinson:** The scheme of employment does not set who the employer is. The employer is the one who is responsible. I am not talking about teachers, because teachers are governed by the Jordanstown agreement, by and large, and, therefore, there is little difference in terms and conditions. However, for support staff, it is quite significant, as I am sure was found when the classroom assistants' job evaluation was done. If somebody can tell me that that was a cost-free endgame, I will be very happy to accept that, but I do not believe that it was.
2117. **Mr Craig:** I want to continue on from what Trevor said. The single employer issue seems to be the key issue for you. Christina, you made that point very strongly, and it intrigues me. As someone in the controlled sector, I get puzzled about that issue, because there are employment rights and laws out there that we all have to meet, no matter what sector we are in. What is it — you emphasised this yourself — about employing and dismissing staff that you can do but that someone in the controlled sector cannot do? I need to understand what the issue is.
2118. **Dr Byrnes:** For us, the issue is that our boards of governors are the employers,

so they have a direct relationship to all our staff. They have a very close relationship with the headmaster and our staff. A key issue on that very question of dismissal or a grievance process is that our boards of governors can move and act very quickly. There is no additional bureaucracy, and we are able to go through the necessary procedures. You are right that there are statutory procedures that we all have to follow in dismissal or grievance procedures. We all have disciplinary procedures that we follow, but we are able to do it on a much more timely basis, we believe, because we are the employer and we are able to go through all those procedures and make the decisions through the boards of governors, without having to refer to another layer of bureaucracy or another authority for approval. For example, the dismissal process, which is referred to in the Bill, would be handled in our school under our disciplinary procedures. In line with the dismissal process, our boards of governors call the dismissal meeting, and it can happen quickly. As boards of governors are the employers, they know the circumstances and our schools very well and have a very close affinity, and we are able to go through the process without having to wait. Unlike if it is referred to ESA, we do not have to wait for that process to take part, however long it is down the line. It is acted on quickly; within one or two weeks, depending on investigations and process.

2119. **Mr Craig:** Christina, I am still struggling to see what the difference is. Are you outside the process and guidelines that the Department gives with regard to, say, teaching staff? It takes a minimum of three years to get rid of teaching staff, and it can take four years to get rid of any senior management in a school. Are you outside those guidelines?
2120. **Dr Byrnes:** No. Our schools all follow the Teachers' Negotiating Committee (TNC) guidelines. Those are all adopted by our boards of governors, and we go through those processes. I suppose that, in the examples that I am giving you, I am

thinking of support staff, who have no union that represents everybody, so terms and conditions are very unique to individual schools.

2121. **Mr J Robinson:** TNC agreements are in place. There is no doubt about that, and I think that all schools adhere to those. You touched on disciplinary issues. The key difference with regard to disciplinary issues is the focus on it by the school, the board and senior management. It does not allow us to move any quicker, but it makes us move quicker. You come back to that centralised principle of the autonomy of a school. I am the first to say that it will not suit all schools to have all-encompassing powers because of the size of them. They need to be a certain size, or you need to spread it along, which I would advocate. I have just listened to the end of the session with the controlled sector principals, and I would fully support that. If we were to have that same system, we would need senior level bursars over four or five schools. I do not have any great issue with that.
2122. The principle of our organisation would be to maximise autonomy in schools and maximise delegation but to have very serious control. To come back again to what we said earlier, we do not believe that the Bill moves education in that direction. Robert Salisbury, who is a much wiser man than I will ever be, moves it in that direction. He advocates moving education — the funding, finance and administration of education — in that way. You have to ask yourselves whether you are content with the work that the boards have done over the years. If you are content, ESA and the way that it is constructed for the future may well be quite reasonable and the way to go. If you wish to do something different that will give you something different in the future, you may have to change that model.
2123. I am of the view that if you do the same thing today and you do the same thing tomorrow, you are very likely to get the same thing tomorrow as you got today. That is a fundamental weakness of the Bill, as I see it. I think that carries through from employment practice, and so on. We are flavoured by what has gone before. We are flavoured by the history and what has happened and what our outcomes have been before in the voluntary grammar school sector. There is no doubt about that. We just do not see anything in the Bill in terms of employment that would make us think that it would be better for us in the future.
2124. **Mr Craig:** Let us leave teaching staff out of this, because I think that we would all agree — the Committee has had a debate on it — that our hands are so well tied on that issue that it is frustrating beyond belief at times. Your ability to employ ancillary staff — obviously, there are varying rights and rates for all of them — gives your schools the edge at times. As someone who gets very frustrated by some of this stuff, I tend to agree with you on that one. That is really what it is about, then?
2125. **Mr J Robinson:** Let me reply by putting a point back to your good self. You make the point about the teaching staff and the agreements. I would say this to you: how did those agreements, which make life so difficult, come about? Is it because it is centralised? Is it because one major body makes the agreements?
2126. **Mr Craig:** A point well made. Thank you.
2127. **Mr Kinahan:** Apologies for missing the presentation. I want to get clarification. GBA recommends amending provisions for the ESA board. As I entered, I think that I heard you say that you did not want a position on the ESA board or were not looking for one. Yet, I felt, from other presentations that we have had, that the Catholic heads felt that they were not part of the Council for Catholic Maintained Schools and were not really included in it, so they are left out and would like representation. I am not clear whether they want to be on the board. I just wanted to —
2128. **Mr J Robinson:** We should clarify that. The question was asked as to whether we would wish to retain the present situation, where we are largely seen as

- autonomous — employ our own staff, and so on — and we had a choice. We could either do that or be a member of the ESA board. I put it to you: which would you take?
2129. **Mr Kinahan:** Exactly the same line as you, I suppose. If you really had your way, you would like both.
2130. **Mr J Robinson:** Not particularly. It must be clearly stated that we are not GBA, but if I had a personal choice, it would not be for the status quo, as such, because I can see some good in various things that are coming forward. However, I would certainly accept what is more or less the status quo.
2131. **Miss Hull:** Our concern is that we are losing out on autonomy, and we do not have a position on the board. So the Bill gives ESA the right to area-plan us, as we said, out of existence. It does not have to consult our boards of governors. We have no place on the ESA board. In effect, there is a major issue of concern for us as a voluntary grammar sector.
2132. **Mr J Robinson:** It is interesting that the Salisbury report — forgive me if I get this wrong, because I have only skimmed it — advocates larger schools that are more fulfilling of the whole requirement of education in Northern Ireland. I think that that is a fairly sensible economic argument, as well as outcome argument, because pupils are members of a school, and it is quite important that they can be educated in that one school.
2133. **Mr Kinahan:** I have one other query. Again, it is the GBA submission, but my concern lies right at the end, when it comes to disputes, and I have raised this once or twice with Chris Stewart. At a meeting with the Minister, he told us that he foresaw that there may be quite a few tribunals to start with as we iron it out. My concern is that it could be a long and slow process. Therefore, when we discussed it with the Department, officials mentioned that article 100 is already open to you for resolving disputes. Do you have any concern about the Bill creating a long and slow battle over a dispute instead of a shorter, sharper one that is fitted into a time frame?
2134. **Mr J Robinson:** Yes; particularly over the heads of agreement. If those are tested, that could go into years rather than — well, you would not go into days.
2135. **Mrs Dobson:** Apologies for missing the start of your presentation, but I read your briefing paper. I have met representatives of voluntary grammar schools a number of times, so I am au fait with your concerns.
2136. I want to take the focus back to powers for boards of governors. Do you feel forgotten as a sector by the drafters of the Bill? Have you made any direct representation to the Department regarding your concerns, given that you represent one third of the entire post-primary sector? If so, what feedback have you received?
2137. **Mr J Robinson:** I think that I can answer that. First, our representations, as schools, would come from the GBA. We would be usurping its place in the food chain by doing anything other than that. Therefore, that would have gone to GBA, and the answer is that I have no idea what the outcomes were. I am quite sure that the GBA will have made various representations.
2138. **Miss Hull:** It is very clear from the Bill that we are losing autonomy, and, as a sector, we have communicated our concerns very strongly to the parent body. There is a very strong feeling out there that the voluntary grammar sector will definitely lose out very significantly because of the Bill.
2139. **Mr Lunn:** I know that your GBA drew up the suggested amendments. There has been a lot of talk about clause 22 and the quite draconian-looking power:
“ESA may do anything that appears to it to be conducive ... to the discharge of its functions.”
2140. I understand the apprehension. The difference is that, with the amendment, GBA has taken out “that appears to it”. In the Bill as drafted, if ESA thinks that

- something appears to it to be conducive, it can work on it. Your amendment says:
- “ESA may do anything which is reasonably necessary for the discharge of its functions.”*
- You have removed the words “that appears to it”. That is quite a significant change. Who will decide what is “reasonably necessary”?*
2141. **Mr J Robinson:** In days gone by, if it was not agreed, the definition of “reasonably necessary” would go before a court. The test of reasonableness normally ends up in front of a court. I can understand that amendment coming from GBA. It is saying that it understands that ESA needs powers and, therefore, that those powers should be exercised, as is the case with most things in life, reasonably. I have some sympathy with that amendment.
2142. **Mr Lunn:** I might have as well, but the Bill as drafted says:
- “ESA may do anything that appears to it to be conducive”.*
2143. That could end up before a court as well in the same circumstances.
2144. **Mr J Robinson:** It could, but you would then come back to the primary legislation. The judge would have to take into account primary legislation. I am not a lawyer but, unfortunately, due to my work, I sometimes have to touch on law. The judge would have to take into account the primary legislation. That is why primary legislation is so important. My memory, from my time in the Civil Service, was that it was about what was in the mind of Parliament when an Act was passed. That is what a judge will look at. That seems a reasonable amendment to me, but, sitting in my seat, it would.
2145. **Mr Lunn:** I am just trying to tease it out; I am not necessarily disagreeing. How would you define “conductive”? Are there any English teachers here?
2146. **Mr J Robinson:** Certainly not. I will not even go there with “conductive”.
2147. **Mr Lunn:** You can go there now on these fancy iPads. It uses the words “helpful”, “contributory”, “instrumental” — perhaps “reasonable”. I do not know.
2148. **Mr J Robinson:** If “reasonable” is not on the iPad, “reasonable” must not be in it. *[Laughter.]*
2149. **Mr Lunn:** We will call that a draw. *[Laughter.]*
2150. **The Chairperson:** Thank you. You have expressed valid concerns, which are shared by some members of the Committee. I have one final point about procurement, which we have not touched on. Sir Bob made a reference to procurement in his report. As I said to the controlled grammars earlier, the Department has changed its mind and now intends for the Central Procurement Directorate to have responsibility for elements of procurement and for ESA to become a centre of procurement expertise. In your understanding of how things have operated to date, how important is it for you to have the retention of the issue of procurement as well? We focus a lot on who the employer is, and what happens when somebody else employs your staff, and so on, but, clearly, the practical aspect of procurement is also an issue.
2151. **Mr J Robinson:** I will answer that, and others can come in. I will speak for our school. Our school has a procurement policy that is in line with the Department of Education guidelines. However, because of the nature of the school, we are able to work on that policy and develop it to be able to cope with the variety of issues that come up. My understanding from talking to others who have been involved with centralised procurement is that it can be slow and ponderous. We do our procurement in line with what is necessary for the good management of the school. So, for instance, if a window gets broken, we are able to get it fixed within four to five hours. That is our general view. If the heating goes down, as it did this morning in my school, we are able to get it sorted in around an hour or so. That is just because of the nature of our procurement. We write exclusions into our procurement policy, such as

emergencies. Sometimes, that is not written into purchasing policies.

2152. Therefore, in summary, if procurement were to be centralised, I would be very concerned not only for our school and our sector but for all schools. I support entirely the views that purchasing has to be done in a competitive and reasonable fashion in line with good principles and good practice, but if you go into a centralised procurement system for some of the smaller things of life, it will become incredibly difficult. For instance, the Department's own building branch seems to be slightly bound up because of various issues around procurement and procurement procedures. That is my very potted version of it.

2153. I have skimmed the Salisbury report, and I felt that it was an excellent document. It may seem very rare for any member of the voluntary grammar school sector to say that about any document that comes from the Department, but, from what I have seen of it, it is an excellent document. Again, speaking for all of us here, we would wish that the delegation would go beyond voluntary grammar schools. We have no axe to grind for voluntary grammar schools. We would be content if it were to go across all secondary and primary schools, where they have the ability or where the ability can be put in place for them to do it in a different way.

2154. **Miss Hull:** To summarise, we believe that we get value for money and efficiency via our procurement mechanisms. We get it done very quickly, and that is really important for our schools. The results in the report show that.

2155. **The Chairperson:** Thank you very much. I appreciate that, and thank you for taking the time to come to see us. Your points and issues will be seriously considered.

23 January 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Stephen Black	<i>Association of Controlled</i>
Mr David Knox	<i>Grammar Schools</i>
Mr Robin McLoughlin	
Mr Raymond Pollock	

2156. **The Chairperson:** We are glad to welcome to the Committee principals Mr Stephen Black of Antrim controlled grammar, or Antrim Grammar School as its title is; Mr David Knox of Ballyclare controlled grammar, or Ballyclare High School; Mr Robin McLoughlin of Grosvenor controlled grammar, or Grosvenor Grammar School; and Mr Raymond Pollock OBE of Banbridge controlled grammar, or Banbridge Academy.
2157. Gentlemen, you are very welcome. Thank you for taking the time. Some of you probably had to battle through some poor weather conditions to get here, so thank you. We are delighted that you are here, and thank you for the contribution that you continue to make to the education of young people in the sector that you represent and to the school communities in which you are leaders. Your schools are exemplary in how you deliver for young people. Other than a few declarations of interest from past pupils —
2158. **Mrs Dobson:** Yes, I am going to do that.
2159. **The Chairperson:** I am sure that Banbridge Academy — a bit like Ballymoney High School — does not sing too loudly about some of its past pupils being members of the Committee for Education. However, you are welcome, and we invite whoever is going to lead off to do so, and then we will have time for questions.
2160. **Mr Stephen Black (Association of Controlled Grammar Schools):** Thank you, Mr Chairman. As chairman of the Association of Controlled Grammar Schools, I thank you very much for the invitation that was extended to us to come here and the invitation to make a submission and give evidence to the Committee as part of its scrutiny of the Bill.
2161. I was going to begin by introducing my three colleagues, but the Chairman has done that. Therefore, for the benefit of those who may not be familiar with it, I will begin by giving some background to our association. It represents the grammar schools in the controlled sector. Geographically covering all five board areas, that includes grammar schools for 11- to 19-year-olds and two for 14- to 19-year-olds in the Dickson plan. Those schools have approximately 15,000 pupils, which roughly equates to around a third of post-primary pupils in the controlled sector. Having reached their enrolment numbers, our schools are broadly full. Many of them are heavily oversubscribed for entry at year 8, which indicates the community support for our schools. We think that there is a very strong sense of belonging with the schools in the community in both senses of the word, and we are very committed to continuing that work in the communities. We also state that the vast majority of pupils who attend our schools are local to the particular area from which we come.
2162. The proposed vision of the body that is being set up to give support to controlled schools as a sector has come with the vision to support controlled

- schools in providing high-quality education for children and young people to enable them to learn, develop and grow together within the values of a non-denominational Christian environment. We believe that our schools represent schools that are already doing that. We are already providing that high-quality education. We are delivering very positive outcomes for young people, both in their exam achievements and in their holistic development, and that is another very important part for us, in that we see ourselves as not just producing the excellent results that we do but producing young people who can go on into all aspects of life and work beyond schooling equipped with a wide variety of skills.
2163. Equally, our schools draw people from all sectors of our community. Many of our schools integrate people from across the whole spectrum of our society, and sometimes that is missed in the whole debate about pupils attending integrated schools. Many of our schools are integrated in many ways in all but name. On that point, it is important to note that, although we are schools in the controlled sector, our schools were not transferred from the Church. Therefore, our boards of governors do not have transferor representation, unlike the vast majority of schools in the sector. Our governors are drawn from the Department of Education and from the boards.
2164. As controlled schools, we have witnessed at first hand the gradual running-down of the library boards, and we fully appreciate and support the need to streamline education administration to ensure that resources can be directed to schools. However, as our submission highlights, we feel that, although the aims are laudable and there are many elements in the Bill that we can support, there are many areas that we feel require clarification and amendment. If the Bill is to deliver what we believed was its spirit — to deliver more autonomy for schools — we are not convinced that that is what it actually states.
2165. I will hand over now to my three colleagues, and they will take us through different parts of that.
2166. **Mr Robin McLoughlin (Association of Controlled Grammar Schools):** The schools that we represent understand that there are many demands facing young people in the modern world. Therefore, we try to create a learning environment that ensures high-quality education inside and outside the classroom: we value both equally. We have a culture of high expectation that promotes high standards of attainment, alongside a wide range of co-curricular and extra-curricular opportunities that are essential for the personal development of our young people and ensure that our pupils are prepared for life after school and the world of work.
2167. Our association and our colleagues whom we have spoken to in other post-primary sectors strongly support the aim of this reform to improve outcomes for all young people and streamline education administration to ensure that much-needed resources can be directed to front line services. However, we have concerns that the Bill as drafted does not necessarily deliver the additional resources or the maximised delegated autonomy as originally suggested. The schools represented by our association have repeatedly demonstrated that we have the financial capability to effectively and efficiently manage our resources. The panel of an independent review of the common funding scheme, chaired by Sir Robert Salisbury, recommends:
- “The Department of Education explores the practical implications and legislative, or procedural changes required to allow any school to adopt the systems of financial management operated for voluntary grammar and grant maintained integrated schools.”*
2168. It also proposes:
- “The Department of Education should review all current ring-fenced initiative funding. For each initiative it should establish if earmarking is a more effective approach than directly delegating to schools via the funding formula.”*
2169. The association contends that the board of governors, in conjunction with

- its senior leadership teams, is best placed to manage the limited resources that are available to ensure the best possible outcomes for our young people.
2170. All the staff in our schools are currently employed by the education and library boards. We note that the Education and Skills Authority (ESA) will become the single employer for all our staff. However, our association welcomes the proposed change to the legislation that will allow individual boards of governors of our schools in the controlled sector to make all appointments, including senior appointments, without reference to a teachers' appointments committee.
2171. There is a diverse range of schools in our education system. Our association contends that any guidance on schemes of employment, including model schemes issued by the Department of Education with the approval of the Office of the First Minister and deputy First Minister (OFMDFM) must take account of the varying levels of autonomy that schools will require.
2172. We also contend that the autonomy offered to voluntary grammar and grant-maintained integrated schools in clause 12, which deals with the payment of salaries and contributions, should be made available to all schools that wish to operate their own payments system.
2173. We welcome the fact that all decisions on staff complements will be determined by the boards of governors, which are best equipped to decide what is in the best interests of each school and can enable each school to best meet the needs of its pupils. However, we trust that there will be increased flexibility for boards of governors in the controlled sector than is currently the case, particularly when it comes to job specifications and descriptions, where some generic job specifications do not necessarily provide an appropriate basis on which to make appointments.
2174. **Mr David Knox (Association of Controlled Grammar Schools):** Good morning. Robin has outlined some of the concerns, but there are others. One of those is the all-embracing powers that are envisaged for ESA in clause 22:
- “ESA may do anything that appears to it to be conducive or incidental to the discharge of its functions.”*
2175. That is very wide-reaching indeed. We believe that it is important to have protection in legislation against micromanagement of our schools by a centralised body.
2176. ESA is, or will be, a very large, centralised and powerful body. It will also be an arm of government. At worst, we as controlled grammar schools might lose the autonomy that we have had under the education and library boards. That has been limited, compared in the past with the voluntary grammar schools. We do not want a one-size-fits-all solution that is aimed at the lowest common denominator. That may be the direction of travel at the moment.
2177. We want freedom to be creative and adventurous in our own development. One of the voluntary grammar schools had an advertisement in a local paper last night for a director of development. At the moment, such a post would not fall into any of the generic job descriptions that we as a controlled grammar school have under the boards. Ballyclare High School had a network solution for information and communication technology in the 1990s when Classroom 2000 was not even on the drawing board. We want to maintain that ability for schools to be creative and imaginative in their development. We do not want, as I said, a one-size-fits-all solution.
2178. We want less bureaucracy, not more. We want less centralisation, not more. We want less red tape, not more. Those are things that will seriously affect our day-to-day working pattern. Clause 22 worries us, in that ESA may do anything in the discharge of its functions. We need to see checks and constraints on ESA's powers and to avoid the mistakes that have been made in England with the large local education authorities. England is now heading in the opposite direction to us by decentralising its

systems. We need to ask why we in Northern Ireland are travelling in the opposite direction to England. We had hoped for much more from the ESA Bill.

2179. Another area of concern is local area planning. We welcome the support of a sectoral body and believe that that body must be capable of representing all schools. As controlled grammar schools, we know that we will be a minority on that body, and we would like to think that we will be represented and that our rights will be protected. We were not heard last time a body was set up for local area planning, and we had no representation on that body. Voluntary grammar schools had representation, but the closest to representation that we had were board officers. We want our voice to be heard this time. We will now have that opportunity through the sectoral body, but it must be set up in such a way that we will be heard. Clarification also needs to be provided on clause 28 and on what criteria ESA will use to determine that the:

“changes to the plan for the area are not of sufficient importance to warrant the involvement and consultation mentioned in”

2180. subsection (1). What ESA may determine to be not of sufficient importance may be of significance to a school and the community that it represents.

2181. Schemes of management is another area that we have concerns about, and we seek clarification on clause 34, which states:

“model schemes regarded by the Department as suitable for particular descriptions of schools”.

2182. We recognise the diverse range of schools and that different schools will seek varying levels of autonomy and flexibility. One of the main messages that we want to bring to you today is that we are seeking maximised autonomy for schools that want that kind of autonomy. That is not just grammar schools or controlled grammar schools. We have had discussions with some big non-selective schools as well, and I can tell you that some of those

schools want that kind of maximised autonomy, want freedom in the day-to-day running of the school and do not want micromanagement. I will stop at that point and hand over to my colleague Mr Pollock.

2183. **Mr Raymond Pollock (Association of Controlled Grammar Schools):** I will restrict my comments to clause 38, which deals with attainment; clause 39, which deals with the appointment of governors; and clause 44, which focuses on inspections. Clause 38 states:

“It is the duty of the Board of Governors of a grant-aided school to exercise its functions with a view to promoting the achievement of high standards of educational attainment by pupils registered at the school.”

2184. As principals of controlled grammar schools, we wholeheartedly support the promotion of high standards of educational attainment. However, we want clarification on how that attainment will be measured and how “high standards of educational attainment” will be defined? It is imperative that an effective value-added measure be available to enable meaningful comparison of attainment right across a wide range of schools. That should be joined up, robust and verifiable. We feel that the data should be reliable and that benchmarking data should run right through from Key Stage 2 in primary schools to post-primary schools.

2185. Clause 39 deals with the appointment of governors. You will be familiar with ‘Every School a Good School — A Policy for School Improvement’ and will know that the core characteristics of successful schools are outlined in that document as being child-centred provision; high-quality teaching and learning; effective leadership; and schools connected to their local community. Controlled grammar schools, as you have heard, are very much connected to their local community, and that is where our governors come from. We subscribe to the vision, and our governors give us leadership. In fact, the effective leadership that our schools enjoy really comes, first and foremost,

from our governors. I think that we would all want to pay tribute to the tremendous work done by governors in guiding schools.

2186. Clause 39 makes it clear that ESA will have the role of making future appointments to the boards of governors of schools. We welcome the spirit of the comment made in clause 39(7):

“It is the duty of ESA, in choosing persons ... for appointment to the Board of Governors ...

(a) to choose for appointment persons appearing to ESA to be committed to the ethos of the school”.

2187. “Ethos” is a very difficult term to define, but I am sure that you know what we mean when we talk about ethos. It is not just the aims, principles and expectations of a school; it is very much the beliefs of the school, the values in the school, how the pupils relate to one another and staff, and how the school relates to the community. It is very important, therefore, that that actually be carried through. It is very difficult to overstate the importance of the expression:

“to choose ... persons ... committed to the ethos of the school”.

2188. It is vital that they be committed to every aspect — the beliefs, values, and so on — before their appointment, without an agenda to influence or alter that ethos. To that end, we welcome the requirement placed on ESA to consult the relevant sectoral body and the board of governors of the school. However, as my colleague David said, we have very small representation on that sectoral body. Although important, should the sectoral body’s opinion hold sway, we are concerned that its voice would be the predominant voice. Therefore, we welcome the consultation with boards of governors. However, I have to say that we do not yet know what weight will be given to that consultation. It would be right to say that we have some concerns as to how ESA will make the judgement as to whether a person is committed to the ethos of the school. How can that be defined? We are not sceptical, but experience to date does lead us to view

the all-encompassing power to appoint governors with some reservations, given that, with just six months or so to run of the current four-year term of office for governors, some schools still have not received their full complement of representatives from the Department of Education. Without appearing to be negative, we say that we hope for a better outcome from ESA than that which we have got from the Department. If governors are to play such a vital role in schools, we urge you to ensure that the process of such key appointments is transparent.

2189. The main subject matter of clause 44 in Part 3 of the Bill is inspection. It is very clear that the Bill significantly broadens the functions and increases the powers of inspectors. As members of controlled grammar schools, some of which have recently been inspected, we recognise the importance of having rigorous inspections. That process is there to promote improvement in the interests of all learners.

2190. I served with the inspectorate as an associate assessor for some three years. I acknowledge and pay tribute to the painstaking work of the Education and Training Inspectorate (ETI). Having recently been inspected, I acknowledge, too, that that painstaking work, although professional, is far from a comfortable experience when it happens in your school. The Education and Training Inspectorate has worked hard to establish a climate of trust, openness and transparency. I think that it has achieved that, for the large part. Its mission statement promotes improvement in the interest of learners, underpinned by values of truth, dignity, service and example.

2191. Our concern is over the increase in powers of the inspectors, as set out in clause 45. Those powers — the power to enable them to take copies of or to take away documents relating to the establishment, the power to require documents to be produced, and the power to obtain access to computers and associated materials — border on the draconian. It is a move back

- to a former era. We feel that they are the complete antithesis of the values that ETI currently espouses. Why such powers? The answer to that question can only be that it would seem to undermine trust and make the inspection process even more daunting.
2192. The statement that the powers described: *“may be exercised at reasonable times only”*
2193. seems to modify what has gone before. Surely that needs to be more clearly defined. What does it mean?
2194. ETI is already overstretched. It is difficult to see how it can take on the additional roles required as well as inspecting teaching and learning and producing the higher standards that we have all seen. However, how does it inspect not only the management of a school but the staffing, equipment, accommodation and the establishment’s other resources? Those are concerns that we share with you about the Bill.
2195. **Mr Black:** There are a couple of other issues. One is the issue of sectoral bodies. Several weeks ago, I was here as part of a working group that is looking into the establishment of sectoral bodies. We welcome the establishment of a sectoral body for controlled schools, in the sense that we believe, as some of my colleagues stated, that controlled schools have not been particularly well represented in the area-based planning process so far. It is important that there be somebody there to represent their interests. It is a very diverse group of schools. As a result, it is important that all schools in the group be represented on the body.
2196. We are also concerned that the sectoral bodies do not take on a form of their own and end up with a lot of duplication of provision that prevents the whole aim of the process in allowing more money to go to front line services. It is important that the duties of those bodies be clearly defined.
2197. Our biggest concerns relate to what could be micromanagement and the extensive powers of ESA. We all heard
- the stories that came out of places such as Montgomery County, to where the Department of Education has sent many visitors, where if school principals want to order a desk, they have to go to a central office. We hope that that is not where we are headed here.
2198. We believe firmly that we support the spirit of the Bill to give schools maximised, delegated autonomy. That is what was promised. Schools, their teachers, governors and the communities that they represent are the people in the best place to make the right decisions for those young people, not bureaucrats based far from where those young people live and are being educated.
2199. I think that we are not alone in this. The recent ‘First Steps — a new approach for our schools’ report from the Confederation of British Industry strongly advocates an acceleration of the programme of decentralisation of control for all schools in England and across the UK in order to allow, as the report states, head teachers to deliver real improvements in their schools. We feel that that was echoed by the Minister of Education when he opened the debate on the Education Bill — the full quotation is in our submission — when he said strongly:
- “we already know what good schools look like.”*
— [Official Report, Vol 78, No 3, p11, col 2].
2200. We believe that the phrases that he used reflect our schools:
- “They have strong, effective leadership from their board of governors and senior management team; they have a strong sense of belonging to the communities that they serve; they each have an ethos that pupils, parents, staff and governors support”.* — [Official Report, Vol 78, No 3, p11, col 2].
2201. The Minister went on to say:
- “they have the autonomy and the support that they need to manage their day-to-day affairs.”*
— [Official Report, Vol 78, No 3, p11, col 2].
2202. **That is really what we are asking for:** that autonomy and support that we need to be able to manage those day-to-day

affairs. As was referred to earlier, I think that that was endorsed even yesterday in the report issued by Sir Robert Salisbury, with his recommendations strongly pointing to giving schools the opportunity to take on more of the responsibilities akin to what voluntary grammar schools have had in the past in being able to run their affairs financially and otherwise. That is really the direction in which we feel the Bill has to go if it is to deliver what we all really want, which is to improve the outcomes for all young people in our communities. This is a once-in-a-lifetime opportunity to deliver that. Therefore, everybody has to ensure that we get it right.

2203. **The Chairperson:** Stephen, thank you very much. Thanks to your colleagues for the paper that you provided for us and also for your elaboration on it this morning. It opens up a raft of issues, and it would be useful for us to try to tease those out.
2204. First, the Committee is not the defender of the Bill. It is not its sponsor. It is the Department's Bill. Therefore, it is our duty to scrutinise it and, where possible, make amendments to it that make it better than what was originally intended.
2205. Can we go back to your reference to an issue that is, in many respects, at the core of some concerns? Where it is going at present is interesting. The issue is around maximised autonomy — schools being able to make decisions that are in their best interests to ensure that they continue to deliver for their pupils. We will take one example, and you referred to it, Stephen. It is the issue of procurement. For controlled schools, procurement arrangements, most of which relate to estate, maintenance and all those issues, are the board's responsibility. I think that sometimes we make the mistake of thinking that, somehow, autonomy is just the domain of voluntary grammar schools. The integrated sector has lived with the power of being funded directly through the Department and not having to go through boards. Other schools have also had that privilege. I find it strange that, in his report, Sir
- Bob Salisbury's first recommendation is not about the common funding formula or the pupil-weighted ratio but about procurement. I will read it to you. It states:
- "The Department of Education should clarify for all funding authorities the exact legal position of all schools in regard to procurement and ensure that procurement guidance issued by each funding authority is harmonised prior to the establishment of the ESA."*
2206. Two weeks ago, the Department of Education changed what it had decided three years ago, which was to set up a procurement directorate. It came to us two weeks ago with a paper, which is in the public domain, that states that there will not be centralised procurement under ESA and that what will happen is that, yes, ESA will become a centre of procurement expertise but for capital construction, and Central Procurement Directorate will look after goods and services. That recommendation does not align with what the Department is doing. However, what I am getting to is the practice. What do you believe has been either to your advantage or disadvantage around the whole issue of procurement? It is clearly becoming a bigger issue than that for which some people really give it credit.
2207. **Mr Black:** First, I will say that I support wholeheartedly what Sir Robert Salisbury has said about procurement, and also his third recommendation, which states:
- "The Department of Education should explore the practical implications and legislative, or procedural changes required to allow any school to adopt the systems of financial management operated for voluntary grammar and grant maintained integrated schools."*
2208. Take our own school's situation, and take something very straightforward like cleaning services. As a controlled school, we are basically directed to use the board's services and are then given what the cost of those services is going to be. To try to get out of that arrangement is very difficult. Yet if I were in a voluntary grammar school of the same size, I could procure private services to do that job for significantly

less money, which would allow me to direct money back into the classroom and direct it more where I see fit.

2209. As it stands, procurement prevents us from making the decisions that we want to make in the best interests of our young people. We are very tied in all aspects of procurement. Staffing issues were alluded to earlier. We are very tied to generic job specifications. If we need somebody to do a specific job, and that job does not exist within the board's framework, we have real difficulties in dealing with it. At the minute, we have been engaged for a long time in trying to release funds — very small amounts of money, effectively as goodwill — for people who are involved in extracurricular activities, whether it be music, sport or whatever. As controlled schools, we cannot do that, and yet schools with their own payroll are able to make those very decisions. As a result, we are looking for the sort of parity that would allow us to spend funds as we see fit. The idea of a fully delegated budget, in our terms, is really a misnomer when you see the way in which we have to work.
2210. **The Chairperson:** Stephen, is that the explanation for the bit in your paper where you make reference to the payment of salaries? Is the example you give the reason why you want to see a different arrangement for the payment of salaries?
2211. **Mr Black:** Absolutely.
2212. **The Chairperson:** That would indicate that there are elements of the current arrangement that are not working satisfactorily. You do not have that flexibility or that maximised autonomy, whether it is for somebody on the sports field or somebody in music, you cannot give that which you believe, in all good faith, is appropriate to what that person is actually carrying out as a duty.
2213. Is there anything else in relation to the payment of salaries that would be another example of that? It is good for members to have a working example. That is the reason why I was keen to

have you and others, who have come to this Committee over the past number of weeks. Sometimes, we sit here in splendid isolation, away from the practitioners and from what really goes on on a day-to-day basis. This is about the running of the school, not about embedding an ideology or protecting an ethos. It is about ensuring that we have good management structures in place that give you the best ability to run your school. And you are worried that you could lose some of that?

2214. **Mr Knox:** I can give you a very simple example. For years, I have paid a nominal fee to staff who take Saturday morning sport. They give up their Saturday mornings to come in. It is £25; it would not even begin to look at a reasonable amount, but that is what we can afford. We paid that by honorarium. Two years ago, the Department said that we could no longer pay that by honorarium. We put the question: how shall we pay it, then? The Department had no answer; and two years later, it still has no answer, and I still have to provide for our youngsters on a Sunday morning, being taken all over the Province to compete with other teams. It is that kind of bureaucracy and red tape that I find frustrating. If you were to ask me whether I see more red tape in the ESA Bill or less, I would have to say that I see much more. That will only serve to frustrate people like us, who are trying to run schools to the highest standard that we can.
2215. **Mr Pollock:** I was going to make that point, and I was also going to mention that it extends to the procurement of services for training our staff. We have to accept the provision that ESA makes, according to the Bill. As controlled schools, we have to take the provision that the Curriculum and Advisory Support Service (CASS) provide. We cannot seek services for training for our members of staff to improve their skills outside that — well, we can, but it is to our own cost.
2216. If maximised delegated autonomy is to mean anything, surely it should mean that, like the voluntary grammar

schools and schools in England that are increasingly moving in this way, we should have the ability to buy in those services and train our staff the way that we want to in the area partnerships that we have. We would like to be able to do that together; not just with grammar schools but with other schools. At the moment, we cannot do that; we have to take what CASS provides.

2217. **Mr R McLoughlin:** I agree completely with the comments about the honoraria system. I genuinely believe that we are in danger of completely eroding the goodwill of teachers in a decade or 15 years, because of the bureaucratic systems that we are going to introduce. We need to be very careful. What we are talking about is goodwill; it is outside their contractual positions. Unions are advising that they should not go on school trips and that they do not need to help out with extra- and co-curricular activities. As school leaders, we are trying to meet the needs of our pupils. As we said in our presentation, it is those extra- and co-curricular opportunities that develop young people and give them the lifelong skills that they need to get jobs. You, and all of us in this room, value those opportunities. We need to be careful that we do not have a bureaucratic machine that prevents that from happening.
2218. In addition, on the procurement of services, I can give a unique example. I was involved in a public-private partnership construction build. I was delighted with that, and I thank Mr Cargo — he is now in a different position, but he was the chief of the Belfast Education and Library Board at the time — and the Department of Education for that. It was a brilliant scheme, because the school had the responsibility for devising and coming up with the lists of furniture and equipment that were needed to meet the needs of pupils. We were left to resource and find the best facilities and equipment that we could for the money. That proved to be incredibly effective. That is what we want again. At the minute, we have to go to board schedules, board contractors and

board suppliers that do not necessarily provide the equipment we need. For example, in Grosvenor, we are looking at procuring IT systems. We are very much tied to systems that do not work, that will not meet the needs of our pupils and that are very generic and meet the needs of the middle rather than necessarily meeting the needs of, for example, a media studies suite, which has high-end demand. We find that very difficult and spend an enormous amount of our time trying to resolve those sorts of issues.

2219. Another example was when we appointed a financial administrator. That did not fit within the generic job descriptions, and it took almost two years to get that job evaluated across the boards. When we appointed the person the board of governors wanted to appoint them on a higher salary than we were told that we could. We could not appoint them on that salary. We indicated that the person would not come, but we were wrong on that. The person came and stayed for three months, until she was picked up by another school sector. The lady wrote to me and said thanks very much for providing all the training that meant that she could get that job on not that much more of a salary, but if we had paid it, she would have stayed. It is that sort of bureaucratic system that we want to end. We need the flexibility to run our resources in the most efficient and effective manner.
2220. **Mr Lunn:** Just on the honorarium question, maybe it is too early in the morning for me, but what does that mean? Does that mean that it is treated as expenses and not taxed, in simple terms?
2221. **Mr Knox:** No. They were taxed through the honorarium.
2222. **Mr R McLoughlin:** Sorry to interrupt. The salary came in as an honorarium payment in their normal payroll, through the Department of Education. So national insurance and tax were paid, and it was paid through the Department of Education payroll. The Department

- now refuses to pay it through the payroll, and it comes out of schools' budgets.
2223. **Mr Lunn:** This has not come up before. Through your study of the Bill, are you reasonably certain that the scheme of employment, which you will be able to draw up yourself, will not allow you to do that again? It may be an improvement in the position rather than being detrimental.
2224. **Mr Knox:** I was giving that as an example of —
2225. **Mr Lunn:** I know. It is a good example.
2226. **Mr Knox:** — where a big centralised organisation can say that you cannot do that, but there is no obligation to tell you how you can do it. So, you are left holding the baby of staff who have done the work and cannot be paid.
2227. **Mr Black:** We understand that we can submit that through an employment scheme. However, ESA can come back and challenge your employment scheme. We have a concern that, if the Department of Education is challenging the scheme at the minute, that is something that it could come back and challenge us on. What we are saying is that, if we actually get the maximised delegated autonomy and are able to do that, that is really what we are looking for.
2228. **Mr Lunn:** ESA can only challenge it if it falls outside statute. Sorry, Mervyn; I do not want to keep on at this. We will come back to it later on.
2229. **The Chairperson:** Before we go to members, I want to clarify one point about the provision of services for schools. Raymond, you made reference to CASS, if it still exists. Since 2006, the Department has had a vacancy control policy to basically run everything into the ground to make sure that it got ESA. I am on public record as saying — and I will state it again today, so that it goes into the Hansard report — that if ESA comes into existence, it will have to re-employ staff. Rather than having the reduction in staff of 50% or something — it was originally supposed to have, according to a paper that we got from the Department some weeks ago — it will have to re-employ staff. That is the reality of the way in which the Department, with its imposition since 2006, has run the service down. I think that that is a very cynical way of trying to get to a particular point.
2230. You have the regional training unit (RTU), you have the Council for the Curriculum, Examinations and Assessment (CCEA), you have what is left of CASS, and you have ESA, and you have the possibility of some private provision. How do you ensure that you are getting, across the piece, whether it be in Londonderry or Newtownards — right across the country, whatever geographical location you come from — that you will be able to ensure that that service is of the quality that is needed to meet the needs of those children, given that current breadth of variation and duplication? CCEA duplicates things. The RTU duplicates things. The boards duplicate things. The Department is coming out with schemes. The way in which services are provided is a bit of a dog's dinner anyway. Have you any comment on that?
2231. **Mr Pollock:** My initial comment is that there are many outside bodies — private bodies — that have their own professional bodies to validate their training and standards. For example, in recruitment, there are many bodies that run training courses that must meet externally validated standards and that give very good training. The same thing goes for how you deal with redundancies. We have used services, at our own expense, to help us to deal with redundancies because we felt that the support that we were getting from the boards was not just as good as it could have been. We have used external professionals who have very high standards and are externally qualified. That is one way in which standards are maintained. Perhaps some of my colleagues can add to that.
2232. **The Chairperson:** No? OK.
2233. One other thing, Raymond. You made reference to the inspectorate. I share your concerns. I think that the Bill is

- contrary to the heads of agreement. The heads of agreement said that it would look at the inspectorate and CCEA separately. However, it is now giving one element of it more power. It is not the critical friend that many people believed. If it were to get these powers, it would certainly not be the critical friend. If CCEA were to be radically changed, would that be any great disadvantage to the schools that you operate? What is the benefit, other than its being the examination body? Indeed, it is both poacher and gamekeeper because it is the regulator and provider. Other than that anomaly, which has to be addressed, what benefit is CCEA to your schools?
2234. **Mr Black:** At the minute, we are involved in a roll-out of Key Stage 3 levels of progression. If the quality of training that has been provided in delivery of the levels of progression is anything to go by, we will not have a lot of confidence in CCEA as an organisation to take forward issues to do with the curriculum.
2235. **Mrs Dobson:** You are all very welcome here, today. Thank you for your presentation. I have to declare an interest, as usual. I rarely if ever mention Upper Bann in the Committee, as the Chair knows. I am a former pupil of Banbridge Academy, as is my son, and I am a great supporter of the school and of Mr Pollock. With that in mind —
2236. **Mr Pollock:** This is being recorded by Hansard, is it not? *[Laughter.]*
2237. **Mrs Dobson:** Yes, it is.
2238. Judging by all your comments and your brief, it is right to say that your major concerns centre on the lack of emphasis in the Bill on delivering maximised delegated autonomy. Every one of you has mentioned that in great detail, and the fact that the present proposals would reverse that. Moving power to the centre, as we know, is contrary to all that is happening in education across Europe at the moment. Do you feel that the Department should have consulted more widely with you and looked at best practice in other countries before drafting the Bill?
2239. **Mr Knox:** Do you want to answer, Raymond?
2240. **Mr Pollock:** Maybe I should declare an interest. *[Laughter.]* The whole import of the Bill is drifting away from the direction in which education is moving elsewhere. In England, for example, much more autonomy is being given to schools. It seems that that is not the case here. In the money that schools get, a bigger proportion of the budget goes directly to schools to spend: we have a much smaller proportion of that delegated budget to spend. In other countries, schools have much more autonomy over the very things that we are talking about, such as standards, recruitment and the whole issue of dealing with members of staff. Procurement of services, as we have already mentioned, be they giving advice for training or even on maintaining a school building, there is a move away in this Bill from practice elsewhere.
2241. **Mrs Dobson:** Are you concerned that your definition of autonomy and the Minister's definition are poles apart?
2242. **Mr Pollock:** What we see in the Bill is not what we understand by maximised delegated authority or maximised autonomy. We have concerns.
2243. **Mr Knox:** We did not come here today to be negative. In fact, that is why we started on a positive note by saying that we support the spirit of the Bill. We came here to warn against moving towards a more bureaucratic system in which we will be hampered by red tape even more than we are today. The Chairman gave a very good example of the present system not being ideal. Many principals would have said, "We do not need five education and library boards", and we have no doubt that there are savings to be had, but we see that the opportunity has been taken to have a command control structure that will not be motivating for head teachers or for teachers generally.
2244. **Mr R McLoughlin:** I will add to what David has said. Picking up on Mr Lunn's point earlier, we are not Bill writers or

drafters; we are not legal people. So, we are not completely sure whether there is an assurance in the Bill to pay honoraria within an employment scheme. That is why we are here today: to point out that we would like to have the autonomy to do things that we know best meet the needs of our young people. However, we do not have the skill set to say, "This is the wording that should be in the Bill". In a sense, that is why we are encouraging you to address that with the appropriate people who are writing the Bill.

2245. I echo the concerns expressed about the percentage of the Department of Education's budget that goes directly to front line services. Everyone in this room is well aware that there has been a great reduction in the Budget to Northern Ireland and that there are limited finances for the Department. It is imperative, therefore, that it is used in the most efficient manner. We, as schools, believe that we are best suited to ensuring that we can meet the needs of the pupils with those limited funds that are available. We have given a number of different examples of why we feel that we need to be given the ability and autonomy to do that, but one thing that we also want to make clear is that we understand the need to be held to account. It is public money, and we are not afraid of, rightly, being held to account. So we want the autonomy but expect the accountability to be there. At the moment, we have limited autonomy that we are worried about losing. I encourage you to make sure that the Bill increases our autonomy.
2246. **Mrs Dobson:** We touched earlier on your concerns regarding the proposed lack of direction of the consultation with schools as regards area planning. What procedures would you put in place through your amendment to ensure that schools are fully consulted? At present, area planning consultation is being conducted through the boards. Do you feel that that local link would be lost, were the Bill to be passed?
2247. **Mr Black:** At the minute, one of our concerns is that, when area planning was initially discussed, groups of people

were brought together. Representatives were there from the Governing Bodies Association, the maintained sector and the integrated sector. The people there to represent the controlled schools were actually board officers, and we contend that they were not the best people to represent the interests of the young people or schools in that area. If there is to be an area to be looked at, it is important that the schools and their governors are clearly involved and able to set out what they see as the plan for the area, and not necessarily a board officer purporting to represent the interests of those schools.

2248. **Mrs Dobson:** They have the local knowledge and the local link and know how it would affect the schools, and so on.
2249. **Mr Black:** Yes, and we see very strongly that it is important that schools are key to that process.
2250. **Mr Pollock:** I would add that the board officers — across the boards — did not follow a consistent practice. They consulted in some areas, but, in others, the first that any school in the controlled sector knew about it was when they saw what the Southern Board produced. I am sorry; I have given it away. *[Laughter.]* There was very little consultation, if any. That is not really treating people with respect.
2251. **Mrs Dobson:** It certainly is not. A final point, Chair, and then I will shut up about Banbridge and Upper Bann.
2252. **The Chairperson:** OK.
2253. **Mrs Dobson:** David, you mentioned — and we touched on this earlier — your views about clause 22 and the concern that ESA would micromanage schools. You suggest an amendment that could prevent that. What are your suggestions in practice? Do you have any suggestions in practice? We know that you are expected to continually raise standards in a climate of falling budgets, and you have all said that. We are aware of the reduction of the age-weighted pupil unit. Are you concerned that what you call the:

- “all embracing power envisaged for ESA”*
2254. that is present throughout clause 22 could lead to undue and potentially damaging interference of school management and, in effect, making a bad situation worse?
2255. **Mr Knox:** Our point is that there is no check or constraint there at all. That is carte blanche for ESA to do anything — exactly what the words say — and we have concerns about that.
2256. **Mrs Dobson:** Have you any suggestions?
2257. **Mr Knox:** I have to say, as Robert did, that we are not lawyers or Bill drafters, but I have no doubt that, if lawyers and draftsmen are given the task of tying that down a bit and not allowing it to go forward as an all-embracing statement in the Bill, that can be done.
2258. **Mrs Dobson:** Thank you very much.
2259. **Mr Lunn:** Thanks, gentlemen; I am sorry that I missed the start of your presentation. I would like to blame the weather but I cannot; I got up at 10.00 am. *[Laughter.]*
2260. **Mrs Dobson:** The rest of us blamed the weather.
2261. **The Chairperson:** That is very honest, Trevor.
2262. **Mr Lunn:** We keep changing the meeting time, Chairman, so it is small wonder that it sometimes happens.
2263. **The Chairperson:** All right; it is my fault, then.
2264. **Mr Lunn:** Can we go back to the honorarium situation? I wonder why, two years ago, the Department suddenly decided that you could not make payments on that basis. I do not remember any change in the education orders or any of the rules that suddenly meant that that could not happen. It seems to me that if it is money being paid to staff and it is openly declared and taxed, I do not see why you should not make some reference to it in your scheme of employment and why ESA would object to it. It is almost like overtime, is it not? Why should there be an objection?
2265. **Mr Knox:** We were baffled at the time as well. My finance committee is made up largely of accountants, and they are baffled by it. I think it is something to do with not only the Education Department, but government generally trying to tighten up on payments being made to staff over and above their salaries in the pay structure. So, it really is a sledgehammer that has managed to crack a nut. The payment that we make to staff is very small change, and it is really just to acknowledge their presence there on a Saturday morning.
2266. **Mr Lunn:** We will be getting advice about how ESA will construe the wording of this, but I am in total agreement with you. It seems completely daft that you do not have that amount of wriggle room.
2267. **Mr Knox:** We did not intend to mention it here today, but —
2268. **Mr Lunn:** I am glad that you did.
2269. **Mr Knox:** It seemed like a perfect example of what we were talking about at the time: a big organisation wielding its power over small fish and making the job intolerable.
2270. **Mr R McLoughlin:** Two years ago, the Department initially came back and said that it could not make the payments, and, eventually, after considerable lobbying by ourselves, the payments were made. They then introduced the need for a business case to be presented for each individual payment for each individual activity, and they had to be put together by schools, so we had to do that work. They were presented to the education and library boards, and, in my case, the Belfast Board approved the business case for each of those cases and went forward to the Department of Education. The Department of Education then has to approve it, and it has to go to the Department of Finance and Personnel, which has to approve it. It then goes back to the Department of Education and then back to the education and library board and then back to the school.

2271. **The Chairperson:** By that time, the teacher has retired.
2272. **Mr R McLoughlin:** Whereas, in other sectors, the payment is made.
2273. **Mr Lunn:** I wonder why the Department of Agriculture does not get involved as well.
2274. **Mrs Dobson:** Do not start me on that.
2275. **Mr Lunn:** Raymond referred to clause 38. It states that it is the duty of the board of governors to promote the achievement of high standards of educational attainment. You seem to have a query, or maybe you want more clarification as to what high standards of educational attainment actually mean. It seems reasonably clear to me what it means, without going into detail. Stephen, you mentioned to improve outcomes for a start and maximise the potential of every child and to achieve the best possible grades for every child as they leave school.
2276. **Mr Black:** We are all here to promote achievement among young people, and we are very passionate about achieving high-quality outcomes for them. One of the things that we are asking for is that, at the current time, it is very hard to compare how young people are actually doing as they move through their education. In order to measure that, schools are having to procure their own benchmarking services to see what abilities people have when they move into their school, how they have progressed as they progress through Key Stage 3, into GCSE and into A level. We think that, if ESA is serious about really promoting improved attainment — and also, as would be the essence here, for governors to be able to see what value schools are adding — there needs to be an agreed value-added measure used by the Department to enable schools to be compared in that way and to allow schools to be able to see how they are doing. I could quote from our own school where, over the past two or three years, there have been very varied intakes in respect of ability, and, when you look at their average cognitive ability test score, there is a marked difference between them. Therefore, you would expect fluctuations and results, and we can do that. However, if we were not paying for that service, we would not be able to show that or why there might be a difference from year to year.
2277. **Mr Pollock:** That becomes even more important when inspectors come into the schools to conduct inspections.
2278. **Mr Lunn:** We are coming to inspectors.
2279. **Mr Pollock:** How do we compare? What measures do inspectors use? At present, it seems that they use a fairly broad-brush measure of average or above average. If we had the standard measure that we outlined, comparison would be much easier, and we would all know what standards were being used.
2280. **Mr Lunn:** I assume that there may well be something coming down the line by way of regulation that would clarify some of those points. However, clause 38, as it stands, seems to me to state the obvious: boards of governors should try to promote high standards within the school and:
- “co-operate with ESA in relation to actions undertaken by ESA with a view to promoting the achievement of high standards”.*
2281. I do not see anything different from what exists at present, but maybe there should be a bit of clarification.
2282. **Mr Black:** We totally support the aim of the clause, but we are asking for a bit more clarity on how that aim will be met and effectively measured.
2283. **Mr Lunn:** I doubt whether that will be included in this Bill.
2284. **Mr Black:** Yes.
2285. **Mr Lunn:** Clause 45 relates to the powers of inspectors. I am not clear on how the clause departs from their existing powers. In particular, you mention the power to take away documents. Can that be done at present?
2286. **Mr Pollock:** The way in which the clause is worded implies something over and above what inspectors currently do.

- In any of the inspections that I have been involved with, and in my many contacts with inspectors, what the collection of data comprises is very clearly stated, and that data is collected before the inspection takes place. It is scrutinised and examined, and any additional data required is requested by the lead inspector. However, the clause states that an inspector can “require” information, which “can be taken away”. That implies that inspectors can take away anything that they reasonably want. I have never seen that referred to, so I imagine that it is an additional power.
2287. **Mr Lunn:** Again, that is the kind of point that you can raise and we can have clarified. It seems to me, and I do not mean to be hostile in any way, that, if you agree that an inspector can inspect documents and take copies of them, invade your computers and, presumably, download, copy and print, you cannot get too picky about whether they can take documents away. What is the difference? They have full access to the documents. Presumably, they have to bring them back.
2288. **Mr Pollock:** Sorry, perhaps I did not make myself clear. I do not think that we are complaining or raising a concern about inspectors taking material away. During my school’s recent inspection, the inspectors had access to cart loads of stuff, and that was not a problem. Our concern is the implication that, without reference to anyone else, inspectors can take the material that they would like to see. The implication is that there may well be something happening that a school is trying to hide or trying not to reveal. That is certainly how it comes across, and I think that that lack of trust strikes at the very heart of the relationship between the inspector and the inspected.
2289. **Mr Lunn:** In a different life, when I was inspected by the Financial Services Authority, it took me six months to recover. It had all these powers, absolute powers. However, we will leave that issue and take some more advice about it.
2290. **Mr Pollock:** If it is appropriate, may I ask a question at this stage?
2291. **The Chairperson:** Yes.
2292. **Mr Pollock:** I have an additional point. Compare the duties of school inspectors to those who inspect on behalf of the Department for Employment and Learning (DEL). Department of Education inspectors are required to:
- “report on any aspect of the establishment including, in particular -*
- (a) the teaching and learning activities carried on at the establishment;*
- (b) the management of the establishment; and*
- (c) the staffing, equipment, accommodation and other resources of the establishment.”*
2293. Compare that with what DEL inspectors have the right, or are entitled, to do:
- “(5) Inspectors conducting the inspection of an establishment under this section may monitor, inspect and report on any aspect of the establishment including, in particular -*
- (a) the management of the establishment; and*
- (b) the staffing, equipment, accommodation and other resources of the establishment.”*
2294. There is no mention of inspecting teaching and learning activities carried out in the establishment. My question is this: why?
2295. **Mr Lunn:** Chairman, we could talk about that all day. I would like us to find out what the existing powers of inspectors are.
2296. **The Chairperson:** Raymond has clearly set out for us that they inspect other elements of the system.
2297. **Mr Lunn:** He has made the comparison.
2298. **The Chairperson:** Yes.
2299. **Mr Pollock:** I simply made the comparison between the two.
2300. **Mr Lunn:** I would like to know what are the current powers of those who inspect schools.

2301. **The Chairperson:** The other day, the Minister made an announcement about the framework for early years and said that he will ask the inspectorate to be involved in that process. Raymond made a point, and I think that he was absolutely right, about an already stretched inspectorate, albeit that it is stretched until its inspectors have to go into a school — it sent eight inspectors into one school in my constituency, and I have serious issues with that. My personal view is that the inspectorate is now being used in a way that was never intended, and that raises serious concerns. However, the issue is about what would happen if the inspectorate were to be given those powers. My personal view is that the inspectorate should be taken out of the Bill completely and dealt with in separate legislation, but we will come to that at some stage.
2302. **Mr Craig:** I declare an interest as chairman of the board of governors of a controlled school. Raymond, I want to explore this issue because I have had the unfortunate experience of having the inspectorate in school. I do not know where its powers stop. My experience is that inspectors can do whatever they want, look at whatever they want, and, if you dare hold something back, you are in serious difficulty. That leads me to ask a fundamental question about the inspectorate and what it does in schools at present. Are inspectors working with schools or against them? I have very strong opinions on this: I believe that, in some of what they do, they are not necessarily working in the best interests of the school.
2303. **Mr Pollock:** I am an associate assessor, and I work with the teams of inspectors. All I can comment on is my experience with the teams, and I have to pay tribute to their very high standard of professional practice. However, I think that you are referring to what they are being asked to inspect. Although I might have my suspicions, I could not say that there was an agenda, other than what that agenda is declared to be, which is to improve schools in the interests of all learners. However, some of what they are being asked to report on and some of what is inspected go beyond what was originally envisaged. Beyond that, I do not feel that I can comment. I have my opinion. However, I, as have many before, share the concerns that you expressed.
2304. **Mr Craig:** It is important to put that on the record. There are issues with inspectors, including that, as you, quite rightly, said, they may be used by others. My gut instinct tells me that that is the case.
2305. **Mr Sheehan:** My questions have been covered by Trevor. They were on the points that you raised, Raymond, about a definition of standards of attainment and the inspectorate issue. You said that, under the new legislation, the new powers of the inspectorate were the very antithesis of ETI's current mission statement. I do not want to labour the point too much, but is it not the case that this is merely the formalisation or clarification of the inspectorate's powers? After all, if you are going to be inspected, you are supposed to put forward everything that you have. You are not supposed to hold back. The legislation simply formalises that process. To say that it is the antithesis of the mission statement seems to me to —
2306. **Mr Pollock:** Perhaps I was expressing a concern that it could lead to a lack of trust.
2307. **Mr Sheehan:** What about the definition of standards of attainment? Like Trevor, I think that it is easily understood. What would your definition be?
2308. **Mr Pollock:** It is not for me to come up with a definition as such. You say that it is well understood, and it is. It is well understood until we start to discuss it openly, and then people have different views about what is good attainment and what is not. As Stephen said, we need an objective measure, particularly where schools are being compared from one sector to the next and from one school to the next. In those

- circumstances, it is good to have an objective measure. All we are saying is that we should look at that and be aware of it. Without having to discuss it with the Committee and defining it in precise terms, it would be a good thing to have.
2309. **Mr Black:** Our concern is about the measures used currently. Three A to C grades at A level and five A to C grades at GCSE level are not necessarily the best measures that could be used. There are other measures that we could use to track standards of literacy and numeracy and pupils' development as they move through their education.
2310. I know that this is not totally related, but schools should not just educate people to gain examination results; we are there to educate the whole person and to develop skills. Employers will tell you that examination results get applicants to an interview, but the other skills that schools have been able to provide and other areas in which pupils are involved outside school allow them to get the job and be successful in it. Quite often, those can be ignored. I am a mathematician and I love looking at statistics. However, we can become fixated on statistics. It is very important to be able to see that, as well as producing high academic attainments for young people, we also develop them in many other areas — we are all very passionate about that.
2311. **Mr Sheehan:** Is there too much emphasis on academic results?
2312. **Mr Black:** No, I am not saying that at all, but you have to look at them in the round. We are academic schools and are very keen to promote academic achievement, but we look at that alongside developing the whole person. The schools are not exam factories, so you cannot just compare their exam results. You have to look at the young people who are produced by the schools as a whole. We all want to ensure that they achieve the very best that they can in their subjects and do equally well outside their subject areas.
2313. **Mr Knox:** However important academic results, and they are very important, our schools are not purely about academic results. Paul Terrington from PricewaterhouseCoopers spoke to my pupils at prize day recently and made the point that good academic results will get them to the interview table, but it is all the other things and all the other achievements that will get them the job. The point is that the inspectorate will not inspect all those other things. Its emphasis will be on academic results. Our emphasis is on providing a broad and balanced education in the classroom and outside it during the week and at the weekend. That is why we run a Duke of Edinburgh award scheme, provide multiple sports, run debating societies, and so on. We do that so that pupils will have all those wider opportunities that may form the skills that will get them a job.
2314. **Mr R McLoughlin:** I agree completely with what has been said. I would simplify it by saying that our schools are about ensuring that each child fulfils his or her potential. As schools, we have to ensure that pupils fulfil their academic potential but also have the skill sets necessary for them to go on and be successful in life.
2315. We have not mentioned our schools' pastoral care system, which runs alongside the extra-curricular, co-curricular and academic offers. Together, they produce a child who will be successful in life and has the necessary skill set to move forward. It is a question of how the totality of that is measured.
2316. **Mr Kinahan:** Thanks very much for a very good presentation. There are a mass of points to take to other people, and I am particularly lucky to have two of your schools in my patch.
2317. **The Chairperson:** Do you mean to say that you are not —
2318. **Mr Kinahan:** Do not go down that route.
2319. **The Chairperson:** I know that the two constituencies have a good MP
2320. **Mr Kinahan:** That is soon to change.

2321. I am glad that we have discussed attainment because, as a Committee, we need to explore further its added value. We discuss sectoral bodies and the membership of ESA every week, and you said once or twice today that you have only a small representation on that board. We wonder whether we should push for a separate body, as the next presentation will suggest, push to amend the existing bodies so that more of you are on the board, or whether we want another separate board for smaller bodies. What do you think is the best route so that you have fair representation?
2322. **Mr Black:** We are heavily involved in trying to ensure that there is good representation on the sectoral body. It is very important that the board represents the interests of all the young people across Northern Ireland, and it is important that all the communities and all the schools are represented so that we get a balanced view when decisions are being made. We are not draftsmen or legal people, but we feel that this provision needs to be amended in some way. That does not necessarily mean that it all has to be completely torn up and started again, but something has to be put in place to ensure representation for all at the table.
2323. **Mr R McLoughlin:** Stephen outlined in his presentation our concerns about the powers that the sectoral bodies will have. It is not just about the representation; we need to ensure that we do not go from a system in which we have limited autonomy now to a system in which somebody else controls the school. The board of governors, the senior leadership team, the community and the parents need to decide what best meets the needs of the individuals.
2324. **Mr Kinahan:** The bodies are lined up in a certain way at the moment, but we do not have representation from principals, businessmen and the skills sector. Is anyone else missing from the ESA board?
2325. **Mr Black:** That is the case with the ESA board. Certainly, the sectoral body is trying to ensure that it does have representation from principals and business. In that sense, there is an attempt to address the issue at that level, if not at the higher level.
2326. **Mr Knox:** I suppose that at least we have a sectoral body being planned. That is not the case for our voluntary colleagues, who are well able to speak for themselves. They do not have any prospect of a sectoral body at present.
2327. **Mr Kinahan:** I have a second question on the powers of the boards of governors. Later, in another presentation, I notice that we will get into the legal definitions of “have regard to”, “due regard”, “consult” or “in consultation”. When it comes to ethos and the boards of governors, do you feel that the wording should be “consult” or “have regard to”? It is a legal minefield.
2328. **Mr Black:** We have all been through the minefield of “having regard to” guidance in other areas. That is the kind of clarification that we need. It is very important that the schools are consulted on having governors who support the ethos of the school rather than having “due regard” to guidance. We know where that debate has gone in the past.
2329. **Mr Knox:** Clause 34 refers back to clause 33, which mentions the Department’s guidelines and could give the impression that those are part of the statutory framework that boards of governors need to adhere to. In fact, it is about “having regard to” guidelines.
2330. **Mr R McLoughlin:** It is worth noting this point, and it is one that we may not have picked up. It is about having “due regard” to guidelines and model schemes that may come out of the Department with the approval of OFMDFM. Other school sectors and schools not as large as ours may not want that flexibility. We are asking the Department to come forward with varying degrees of autonomy to allow schools such as those in the association that we represent to exercise that autonomy.

2331. **Mr Rogers:** You are very welcome. I declare an interest as a former headmaster.
2332. First, I commend you on keeping pupils to the fore when it comes to levels of attainment, raising standards, and so on. I share your frustration about there being no robust and verifiable benchmarking data, which probably confirms my opinion on levels of progression, but I will go no further on that today.
2333. My question relates to a point that Danny made. How can you reconcile your limited representation on the sectoral bodies with ensuring that, in your words, they do not take on a “life of their own”? If things work out and you get maximised delegated authority as a group of schools, there will be other schools, from secondary down to small primary schools, that would not be able to cope with that autonomy. Will the sectoral body take on all the bureaucracy for everybody?
2334. **Mr Black:** That is a very valid point. The controlled sector’s range of schools is genuinely diverse: the schools range in size and type and include primary schools, nursery schools, and so on. Clearly, schools will want varied levels of autonomy. As we said in our submission, we feel that autonomy is important. Even the Education Minister, when bringing the Bill to the Executive, talked about giving autonomy to schools that wished to have it. We believe strongly in that, and that is what we are here pushing for today.
2335. It is important that all types of schools, therefore, are represented in those bodies. It is also important that cognisance is taken of their opinions and the fact that there is such a diverse range of schools within the sector. We are a very small number of schools within that group, but we represent a significant group of pupils and parents. The interest and views of those parents are clearly demonstrated in their coming forward at year 8, and so on. It is important that the sectoral bodies take account of that when it comes to the ability to comment. It is important that they can comment, but it is also important that they take account of the opinions of all within the sector.
2336. **Mr Rogers:** Will we not end up with a lot of duplication again because, whatever your sectoral body has, the other sectoral bodies will want the same? That duplication would mean less money for —
2337. **Mr Black:** As I said earlier when talking about the sectoral bodies, it was important from the controlled schools’ point of view that they got a body, which, historically, did not exist. However, it is important that we do not end up with a lot of duplication of provision and that the bodies do not take on a life of their own. There is a real danger in that. We are here to argue for money to go to front line services. Sectoral bodies can have a role without becoming a recreation of bodies that may already exist.
2338. **Mr Rogers:** You are right to say that we do not want to exchange one degree of control for another.
2339. **Miss M McIlveen:** I declare an interest. Antrim Grammar trained me, and Grosvenor Grammar employed me.
2340. **The Chairperson:** I think that we need to talk to those two schools. *[Laughter.]* You have just scuppered their presentation. Their reputation is now lying in tatters.
2341. **Mr R McLoughlin:** We employ the best. *[Laughter.]*
2342. **Mr Black:** And he employs only those we have trained.
2343. **The Chairperson:** The self-interest and promotion of members on this Committee is unbelievable.
2344. **Miss M McIlveen:** Clearly, I need say no more.
2345. Most of my questions have been covered, but I have one very quick question about ethos. In your introduction, Stephen, you were very clear that controlled grammars are non-denominational Christian environments

and that their ethos relates strongly to that. Later, Raymond said that it was very difficult to define ethos. You said that ethos is about much more than aims and principles; it encompasses the values, and so on, within a school. I know, through various questions on the appointment of governors, that there is a concern for you about ESA's interpretation of what a commitment to ethos really means. Why is there a perception that you are perhaps fearful of the Bill in that respect, given the fact that you have a very clear ethos in your school? How can the Bill compromise that?

2346. **Mr Black:** From our point of view, we have been very fortunate that our board of governors has remained fairly static. The Department's representatives and the education and library board's representatives are people who are very supportive of the ethos of our schools. However, we have seen, in other areas, governors who are keen to serve on boards of schools not being ratified by the Education Minister or, in fact, other people being placed on the boards. We certainly would not like that to happen in our schools. Our schools are very much schools within in our communities. We draw our pupils from our communities; we draw our governors from our communities. Therefore, the governors very much represent what we are and what we stand for. It is important that that continues. The situation that I described has not happened in my school. We have been very happy with the way things have gone. We want it to remain like that. We do not want it to change.
2347. **Miss M McIlveen:** I think that the concerns expressed today are valid and have been very well promoted. Thank you again for your presentation.
2348. **Mr Lunn:** We did not mention clause 12. You think that controlled grammars should have the same ability to make salary and allowance payments as the voluntary grammars and grant-maintained integrated schools are being offered. Are you not asking for extra work? That ability does not mean that voluntary grammars or grant-maintained integrated schools are the employers. It just means that they make the salary payments instead of, presumably, sending them through to the board to make them. Is that a big issue for you?
2349. **Mr Black:** It is a big issue, and it is one that was echoed in the independent review of the common funding scheme, in which Sir Robert Salisbury said very clearly that the Department should consider legislative changes to allow any school to adopt the systems of financial management operated for voluntary grammar schools. Earlier, we quoted examples of honorarium, and we do not necessarily want to go back down that road. However, that is only one example. You say that this would create extra work for us but a lot of duplication of work already goes on. Somebody in our school looks at our salaries, but so does somebody in the education and library board. We are saying this: reduce the duplication, and allow us to get on with the job.
2350. **Mr R McLoughlin:** Reduce the duplication, which would provide more money to front line services. Then, our school would be funded differently, which would mean that we would have the funding to put in place the structures necessary to do a more effective job.
2351. **Mr Lunn:** I take your point about duplication. You are not saying that you would be able to operate differently, because you would be operating under the scheme of employment that you agreed with ESA anyway. The real difference relates purely to duplication. It is a question of who issues the cheques or processes BACS payments, is it not?
2352. **Mr Black:** I think that there are issues about that. We say that, at the minute, in addition to the duplication, we are being stymied by what is happening in the boards. We are asking for that to be removed. In taking the thing to the Executive, the Minister used phrases along the lines of, "Schools that wish to have autonomy should have it". We

are saying that it should be there for all schools that wish to have it.

appreciated, and no doubt we will have further discussions in the coming days.

2353. **Mr Lunn:** Fair enough; the point is well made. It is a different issue, but an argument is starting about clause 10(c) of the heads of agreement, which deals with employing staff. OK; thank you very much.
2354. **Mr Craig:** That point is important, because we have had this debate internally in our own set up. You do not have the ability to have a bursar. You do not have the ability to have a lot of these other things that fall outside of what the board or the Department determines to be “necessary” for the school. Yet, others have them and use them to their advantage. So I think that you are 100% right on this very important issue. There should be a level playing field right across the board.
2355. **Mr Black:** Absolutely.
2356. **The Chairperson:** May I clarify one point in relation to all of that? In your view, having had the board as the employer of your school staff, is it possible to have a single employer and have maximum delegated autonomy — along the lines that you described — for payments, appointments and all of the other things? Or, as others argue, are those inherent contradictions under the proposed structures?
2357. **Mr Knox:** At the start of our discussions as an association with the Department, we were promised that this would allow us to become more like the voluntary grammar schools. The reality is that the Bill seems to strip away many of the powers that voluntary grammars have, and there seems to be no provision to increase the autonomy for controlled schools. As I said in my part of the presentation, we know that there are non-selective schools that are equally anxious to have maximised autonomy. So, this is not a grammar school issue; it is an issue for big schools that want the freedom to operate without interference and red tape. That is the issue.
2358. **The Chairperson:** Thank you very much for your presentation. It is very much

30 January 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Chris Stewart *Department of Education*

2359. **The Chairperson:** We will not go to clause-by-clause consideration of the Bill, but what we have agreed is that we will bring Chris back. That means that we can have Chris now at the end of the table and ask him all the awkward questions. He just loves this part of the day; he looks forward to this every Wednesday, I know.
2360. **Mr Chris Stewart (Department of Education):** I missed what you said there, Chair, but I am sure you said that you were going to give me a very easy time.
2361. **The Chairperson:** We have to be out of here by 1.30 pm, is that right?
2362. **The Committee Clerk:** An hour for this, and 15 minutes —
2363. **Mr Stewart:** I can filibuster until then easily, Chairman.
2364. **The Chairperson:** There are a number of questions that we want to run through. Trevor, we asked you to raise one earlier on, I think.
2365. **Mr Lunn:** Did you?
2366. **The Chairperson:** I think we did and said we would come back to it.
2367. **Mr Lunn:** It will maybe come back to me.
2368. **The Chairperson:** Aye. One thing that was raised — and I will try to go through these, because we have tried to collate some of these. Following passage of the Bill, would controlled schools be able pay honoraria?
2369. **Mr Stewart:** Chair, the short answer is yes. That issue was raised by controlled school colleagues, obviously speaking about their particular experience, but the position is the same for all schools in all sectors and of all types. If I can summarise, any school can pay honoraria to teachers if required, but there are rules. The rules are set by the Department of Finance and Personnel (DFP), and it is necessary to have approval from the Department of Education (DE) and DFP on a business case setting out the case for payment of honoraria. Those are rules that apply and are set by DFP because education is a public service and schools are public bodies. Schools are regarded and classified by DFP as non-departmental public bodies. Therefore, the accounting rules and regimes that apply to such bodies must apply to schools.
2370. We recognise that the primary purpose of schools is to deliver teaching and learning and not bureaucracy, so we want to make that process as simple as possible. The Department has a policy and a procedure for obtaining approval, which we have aimed to make as simple as possible but on which we recognise that there is scope for improvement. Colleagues on that side of the Department are looking at that to see whether there are ways that we can make the process simpler and quicker for schools. The fundamental requirement remains that there must be approval for honoraria, but it is possible for any school to pay them.
2371. **Mr Craig:** That is quite an interesting statement. I am probably aware more than anyone of the rules and procedures around all of this, Chris. Although I do not disagree with you that there have to be rules and protections built into any process, it is a very bureaucratic

- system. Can I ask you a very simple question? What level of honorarium does this kick in at? That is where the whole system falls flat.
2372. **Mr Stewart:** To my knowledge, and I can double check this, it would be at any level of payment. The payment of an honorarium requires approval.
2373. **Mr Craig:** Correct.
2374. **Mr Stewart:** There is no de minimis.
2375. **Mr Craig:** The idea that you can give someone who has gone above and beyond the call of duty a fiver or a tenner or whatever — there is no flexibility in the system, and that is at the root of the problems on this issue, which, hopefully, the Department can look at.
2376. **Mr Stewart:** That is a fair point, and it is correct to say that the level of checking, the level of approval and, therefore, the level of bureaucracy would be the same whether it was a payment of £5, £500 or £5,000. However, that is not something over which the Department has any discretion. DFP rules on this are very clear. There must be a business case and there must be approval. We are absolutely seized of the need to make that process as simple as possible for schools. We do not want them spending a disproportionate amount of time or having to fill in a disproportionate amount of paperwork for what is quite a small payment. I would hope that this is not something that would have to be done frequently. Once approval is given, it is given.
2377. **Mr Craig:** We were discussing unintended consequences earlier, and we have to acknowledge, Chris, that the unintended consequence of introducing those rules and procedures for honoraria has quite frankly, particularly in the controlled sector, been that they have died, have disappeared, are off the table and are gone.
2378. **Mr Stewart:** I understand the difficulties caused there. It would be unfortunate if controlled school colleagues left you with the impression that this was something that DE introduced, only for controlled schools or, indeed, only in education. These are the rules on public funding that apply to every public service, and we are obliged to follow them.
2379. **The Chairperson:** If we could try to keep within the confines of the questions, that would be helpful.
2380. **Mr Lunn:** I think that maybe it was clause 22, Chris. Yes:
“Except as otherwise provided... ESA may do”
2381. whatever it likes. Can you clarify that for us, please?
2382. **The Chairperson:** That was legal jargon that you used there, Trevor.
2383. **Mr Lunn:** That simplifies it a wee bit. I am a simple man.
2384. **Mr Stewart:** I am grateful for the opportunity to answer that question. I have listened very carefully to the evidence given by stakeholders in recent weeks. It is clear that there are a lot of very sincerely held and articulately argued concerns about the Bill, but some of them simply do not stack up when you look at them.
2385. There is a great deal of concern out there and fear among some stakeholders that buried somewhere in the Bill is the clause that allows the Education and Skills Authority (ESA) to march in and take over schools. They have looked very hard for that but, so far, they have not found it. Last week, some colleagues thought that they had found it in clause 22. Let me assure the Committee that that is not the case. There is no such clause in the Bill, and clause 22 certainly is not it.
2386. There are two particular qualifications in the clause that I think are very important. When people quote it, they tend to quote the middle words. They leave out the beginning and the end. The words at the beginning that Trevor quoted are very important:
“Except as otherwise provided by any statutory provision”.

2387. Translated into English, that means that if the law assigns a function somewhere else, ESA cannot do it. The law assigns the responsibility for the management of schools very clearly to boards of governors. Therefore, ESA cannot manage or get involved in the management of schools, and clause 22 does not allow it to do so.
2388. After the words that most people quote, the clause goes on to say that it can:
- “do anything... conducive or incidental to the discharge of its functions.”*
2389. The functions of ESA are also specified in statute, so ESA has only the functions that statute gives it. It cannot invent new ones. This power is to facilitate what ESA has to do, and what ESA has to do is what the Assembly tells it to do.
2390. I have to say as well that this is a standard clause that you would see in any Bill that comes before you to establish a new non-departmental public body. There is an almost identical clause in the Libraries Act (Northern Ireland) 2008, which established the Libraries Authority. There is even a very similar clause in the Charities Act (Northern Ireland) 2008. The Charities Commission has this power. It is one that, I think, any policy civil servant, and certainly any draftsman, would recommend to a Minister as needing to be there. The clause also gives examples of where the power would be used in practice.
2391. Just to take the mythology away from this, it is not the clause by which ESA will march in to schools and take over. It is the clause by which ESA will sign a contract with a catering provider for the headquarters canteen.
2392. **Mr Lunn:** This is a clause that prevents ESA from doing those things.
2393. **Mr Stewart:** It is very carefully drafted, as all these clauses are. It is not carte blanche for ESA to defy the will of the Assembly and take additional powers onto itself; quite the reverse.
2394. **The Chairperson:** Anybody else on that point? OK.
2395. I want to raise the one around — we are restricted in what we can say in some regards because we had legal advice.
2396. **Mr Stewart:** As long as you say “without prejudice” first.
2397. **The Chairperson:** Yes; without prejudice. A particular concern was raised following the Department’s response to the Judge Treacy case, which dealt with the specific issue of transport in the Irish-medium sector. Judge Treacy did not accept the Department’s contention that the duty under article 89 was merely aspirational but found that the imposition of a statutory duty was and is practical and is intended to be implemented.
2398. It seems as though, in its submission to that case, the Department said that the duty placed on it by the Education (Northern Ireland) Order 1998 to facilitate and promote Irish-medium education was only aspirational. The judge found that it was different. In relation to the Bill, we have heard you, Chris, say, “That is a phantom; that is not the intent.” How can we be sure that what the Department deems as being aspirational will not actually, in law, work out to be practical in its consequences and practical in its significance?
2399. **Mr Stewart:** Chair, I was not directly involved in the Treacy judgement or the matters that led to it, but let me reassure you that I do not personally recognise the concept of an aspirational duty. A duty is just that; it is something that a public authority or a Department is required to do or required to do in a particular way. Some duties in law are occasionally qualified. You will see a phrase such as:
2400. **“so far as is reasonably practicable”.**
2401. That recognises that what is good enough to satisfy the duty today may not be good enough to satisfy the duty tomorrow. Policy and practice move on. Anything in the Education Bill that is couched as a duty is not regarded as

- aspirational but as something that ESA must do.
2402. **Mr Lunn:** I think I remember now. I think it was clause 45 — and I raised it last week — about the powers of inspectors.
2403. **The Chairperson:** Okay. We will deal with that now, then.
2404. **Mr Lunn:** Chris, you were there last week, so you know what the concern was. How do you see the difference, if there is any, between the existing powers and the powers that ESA will give inspectors, particularly in taking copies and taking away documents, and so on? Do you think that the powers are being extended in a meaningful way by the ESA Bill and that that is something that should concern schools?
2405. **Mr Stewart:** If I can just correct something first, Trevor: they are not ESA powers in any way. The inspection powers are the Department's powers, and that will be the same under the Bill.
2406. **Mr Lunn:** Forgive my language.
2407. **Mr Stewart:** There are some differences, but they are not huge. The differences reflect the advice of successive chief inspectors that the inspection powers needed to be strengthened a little bit and brought into line with inspection powers in other jurisdictions. So, the areas where they have been strengthened are those that were referred to by stakeholders last week: some very precise powers around access to documents, access to computer records and the ability to take away copies of either of those.
2408. There is no doubt that that constitutes a strengthening of the powers. Whether it is a major strengthening is a matter of opinion, and you have heard a range of opinions from stakeholders. It is also an observable fact that, even if those provisions do go forward and pass into law, the powers available to inspectors here in Northern Ireland will still be considerably weaker than those that are available to inspectors in Ofsted, where the whole legal basis of inspection is fundamentally different. For example,
- in England, it is a criminal offence to obstruct in any way the inspection of a school. There is no suggestion from any quarter that a similar provision will be introduced here.
2409. **Mr Lunn:** Is there an order somewhere that confers powers on inspectors at the moment?
2410. **Mr Stewart:** Current powers are set out in article 102 of the Education and Libraries (Northern Ireland) Order 1986. For the most part, that is very similar to the clauses in the Bill.
2411. **Mr Lunn:** Is it easily accessed? Can we look at it?
2412. **Mr Stewart:** We will be happy to provide the Committee with a little table, perhaps, comparing the two provisions.
2413. **The Chairperson:** I think that was — I wonder has that been requested?
2414. **Mr Lunn:** I asked for it to be requested last week.
2415. **The Chairperson:** Yes.
2416. **Danny, is it on this issue?**
2417. **Mr Kinahan:** It is really on the same issue. It is not just clause 45, if we go back to what we were talking about in clause 22. Clause 44(8) says:
- “The Department may give directions under Article 101 of the 1986 Order for the purpose of remedying any matter referred to in the report of an inspection”.*
2418. It is another one, if you like, that people look at as being under the title of Hitler clauses because they give the Department extra power.
2419. **Mr Stewart:** I will not use that particular phrase myself, but that particular provision is identical to the current law. As things stand, the power of direction can be used to remedy the findings of an inspection today.
2420. **Mr Kinahan:** It raises the concerns —
2421. **Mr Stewart:** That is a significant power, but it is a significant power that already exists. It is not new.

2422. **Mr Kinahan:** There is also the comment from people that you already have all these powers. Do we really need to strengthen them? What is missing?
2423. **Mr Stewart:** Again, I have to be guided by the professional advice of successive chief inspectors, as I have said. Their advice to me and, more importantly, to Ministers was that there was a need for strengthening of the powers. Ministers have accepted that advice.
2424. **Mr Lunn:** It is constantly pointed out to us that the reason why something is not in the ESA Bill is that it is already in some other order from the dim and distant past, yet the one that Danny referred to there is apparently being restated. Why is that?
2425. **Mr Stewart:** In each case, there is a judgement call to be made, and on that we are largely guided by legislative counsel. If it is only a matter of changing a couple of words here and there, his approach tends to be to put an amendment into the relevant schedule in the Bill, so you leave the existing provision where it is and change it very slightly in situ. When it reaches what, in his professional view, is a tipping point — when you are changing more than you are leaving — his advice would normally be to repeal the existing provision and re-enact it in its amended form, which is neater, cleaner and easier for the reader to understand. The best example of that is probably the Council for the Curriculum, Examinations and Assessment (CCEA) clauses in the Bill. As I have said before in Committee, there are no significant policy changes there, but there was so much tidying up to be done — we had not done that down the years, because it was previously thought that CCEA was going to become part of ESA — that counsel's view was that we needed to repeal the existing clauses and re-enact them so that we would have a nice clean set of provisions that are easily understood.
2426. **Mr Lunn:** Following on from that approach, is it reasonable to ask for the clause in the previous order that required the Department to encourage and facilitate integrated education to be restated because of the constant cry from that sector? You have explained the reason for the Irish-medium requirement being restated, but the integrated one is not.
2427. **Mr Stewart:** That is not quite the position. Neither of the fundamental duties on the Department to encourage and facilitate those particular types of education is restated. They are both in situ, where they were originally made. There is an additional provision in clause 2(5) that relates to Irish-medium education, but it is different in nature from either of the other duties. The point that I have made on it, and the way I would describe it, is that it is not rights-based but needs-based. It is recognising that education that is delivered through the medium of the Irish language has particular needs that simply do not arise when education is delivered in English.
2428. The example that is often quoted by colleagues in the sector is curriculum support. They rightly say that producing curriculum support materials, for example, is not just a case of taking the English materials and translating them into Irish. They need to be developed in a bespoke way, from a blank sheet of paper, recognising the needs of the pupils and the task facing the teacher to deliver the education in Irish. The purpose of that particular duty on ESA is to say to ESA that there are certain things that it needs to do for all schools, but it needs to do them in a particular way for Irish-medium schools. It is not the case — at least, we are not aware of it being the case — that there is a need for a similar sort of duty in relation to integrated education. There is nothing that I am aware of in an integrated school that needs to be done in a particular way.
2429. **Mr Lunn:** No, but the requirement at the moment is for the Department of Education to encourage and facilitate integrated education. Does that mean that there is no requirement on ESA?
2430. **Mr Stewart:** There is no specific duty on ESA, just as there is no general

overarching duty on ESA to encourage or facilitate Irish-medium education. It would be perfectly open to Ministers or the Assembly to have either or both duties, but that is not the policy position at the moment. I understand your point. We hear it clearly every day, and I am in receipt of letters every day from the integrated sector making that very point. However, if I were to suggest that to the legislative counsel, his response would be to ask why, because it would make no difference to the law to simply restate it in another place.

2431. **Mr Lunn:** Yes, but the sector would say “why not?” We get this all the time.
2432. **Mr Stewart:** I could well imagine it saying that. Generally, the Assembly has not, in the past, favoured simply restating legislation in order to give it greater prominence.
2433. **Mr Lunn:** We have had it from the other side as well. When we had representatives from the Voluntary Grammar Schools’ Bursars Association here, some of us were trying to assure them that there was nothing to worry about in that particular area that you are referring to. They were reasonably asking why it was there. If you say that it does not make any difference to their modus operandi as it is at the moment, they ask why it is there. We are saying “why not?”
2434. **Mr Stewart:** What I would say to them is that the policy task that the Minister set me was to deliver his policy in a way that does not interfere with the autonomy of schools. That is what we believe that we have done. If the voluntary grammar sector wishes to question why the policy is there, I am afraid that I will have to direct them to the Minister on that point.
2435. Interestingly, the voluntary grammar bursars and their controlled sector colleagues raised a similar point last week. In essence, they were asking where the greater autonomy was in the Bill. The answer to that is that we have to acknowledge that it is a difficult read. There are parts of the Bill where there are many words that have comparatively little effect, but there are other parts of the Bill where there are only a few words that have a very profound effect.
2436. In relation to the controlled sector, there are a few words that have a very profound effect indeed. Clause 10 — I think that it is clause 10; colleagues will correct me if I am wrong — is the clause that defines the management arrangements for controlled schools, and it says very clearly that a controlled school is one that is under the control and management of its board of governors. That is a huge change: a controlled school today is under the control and management of an education and library board. All the things that you heard controlled sector colleagues say last week that they found difficult and challenging stem from those management arrangements. So, the need to adopt a standard job description or set of terms and conditions comes from the fact that that is what their education and library board says. Any restriction on employing a bursar or any other type of staff stems from the fact that that is what their education and library board says. If the Bill becomes law, those will be decisions for the boards of governors. If they want to take a standard job description from ESA, they are, of course, at liberty to do so, and if they want to draw up their own, they are at liberty to do so. If they want to employ a bursar, that will be a decision for the board of governors. If they want to co-operate with another school and employ a bursar, that will be a decision for both boards of governors.
2437. The converse is true when it comes to the voluntary grammar bursars, because those are all things that they can do already. They look at the Bill and say, “Where does it say that we can still do those things?” It does not say it in the Bill, because it does not need to: we are not changing the law on that. You do not need to legislate to say that you are not changing the law; you only need to legislate to say when you are changing it.
2438. **Mr Lunn:** An executive summary would be handy.

2439. **Mr Stewart:** The executive summary is that there is nothing to worry about there.
2440. **The Chairperson:** What you have said will be reported by Hansard, so we are all right.
2441. **Mr Stewart:** Hansard always writes it up better than I say it, anyway.
2442. **Mr Hazzard:** I want to go back to the legal briefing that we received earlier about the ruling from Justice Treacy. If I stray onto ground that I should not, you can interject and shout me down. If we accept the premise that there was not the legal precedent that was outlined earlier, what effect did that verdict have on the Department of Education? Where does it come into the Department's thinking, even as regards the Education Bill?
2443. Hypothetically, if the schools transport issue rose again, how does the Department practically measure or quantify how far to go to facilitate and encourage? What I might facilitate and encourage could be a long way from what Jonathan or somebody else might facilitate and encourage, so how do you decide on the level?
2444. **Mr Stewart:** I have to give the caveat to my answer that I am not aware of the legal advice that the Committee has received. I do not have the benefit of that. The Department recognises that it needs to examine the judgement very carefully and to apply the judgement's findings in any policy or operational decisions that are made from here on in. As your question implies, no box is ticked or empirical test applied that says, "That satisfies the Treacy judgement" or "That does not satisfy the Treacy judgement". It is always the case that one must make a judgement, hopefully not in a court, on the test of reasonableness. The question is whether we have reasonably given effect to what a court might decide is what we reasonably ought to have done. The Treacy judgement clearly changes that. It clearly finds that we did not get that test right in our application of it in those particular circumstances. So, we need to look at that again and to look at that as similar circumstances arise.
2445. I noted in one of the previous evidence sessions that one set of stakeholders made the statement that the Treacy judgement introduced an additional statutory duty to the Department. It does not. That statement is clearly wrong. It has implications for how we interpret and apply the existing statutory duty, but it does not introduce a new statutory duty. That would be unconstitutional: courts do not do that; that is for the Assembly to do.
2446. **Mr Lunn:** Assuming the Treacy judgement did not exist — that is, without prejudice and hypothetically —
2447. **Mr Stewart:** Trevor, I think that, as a Member, you have absolute privilege.
2448. **Mr Lunn:** I will probably see you in Chichester Street.
2449. Leaving aside the particular requirements of the Irish-medium sector — things are done in Irish, that is a given and there is a clear need for special treatment — the duty on the Department or ESA — both or either — is otherwise very similar for the Irish-medium and integrated sectors. If, over the years, the Department conceded that there was a special need for exceptional treatment in terms of transport for the integrated sector, is it reasonable to say that we would not need to argue about the need for that same treatment for the Irish-medium sector?
2450. **Mr Stewart:** I cannot comment in detail on the transport issue and how it applies to either the Irish-medium or integrated sector. I simply do not know enough about the subject to give you what would be a helpful answer.
2451. The fundamental duties on the Department are very similar, and the wording is almost exactly the same, in relation to Irish-medium and integrated education. For most provisions that relate to Irish-medium, there is an equivalent provision on the integrated side, either in the Bill or in existing legislation. The one area where that is not the case is clause 2(5); there is no

integrated equivalent to clause 2(5). I have given the reason for that, which is that clause 2(5) stems from a particular need. Members will not have seen the Department's written reply yet, but, hopefully, it will be with you in time for next week's meeting. The Minister has indicated that he has an open mind on this. If it can be demonstrated to him that there is a need in the integrated sector for such a provision, he is prepared to consider the argument for that.

2452. **Mr Lunn:** I just wonder why, because both sectors have the same problem. Their pupils do not necessarily come from a close catchment area. They come from further afield to access the particular type of education that is provided in those schools. So, there is a different transport conundrum.

2453. **Mr Stewart:** I recognise that. I must not pre-empt policy decisions that the Minister might make, but I think that he recognises that such arguments can be made. He has said that he is open-minded on this, and that he is prepared to consider those points if they are put to him.

2454. **Mr Kinahan:** Chris, I want to come back to the strong clauses in the Bill as they relate to boards of governors. Clause 44(6) states that inspectors may:

"inspect and report on any aspect of the establishment".

2455. I am not saying that that is the wrong thing to do, but how do we get there?

2456. At the primary school governors' meeting that I went to — Mervyn was at it too — there was enormous discomfort in the fact that they were being told that they were going to be judged and that statutory roles were probably going to be brought in. If you start to bring that in, these clauses become quite frightening. How can you allay their fears?

2457. **Mr Stewart:** We absolutely recognise that concern. I would make three points in response. First, the reason why it is essential that the inspection regime includes governance and what boards of governors do reflects the evidence that

you have heard from many stakeholders, including the Department, about the factors that contribute to the success of a school. We know that, first and foremost, it is the quality of teaching in the classroom. We know that, second to that, is the quality of leadership, not just in the senior management team — very important though that is — but in the board of governors. Given the pivotal role that governors have in determining whether a school is successful, that is surely something that the Department and the inspectorate should be looking at in assessing — I use the word "assess" rather than "judge" — whether a school is successful. We recognise that, inevitably, along with that comes concern about what that means. Governors perform that vital role in a voluntary capacity in their own time. We need to be very conscious of that and not do anything that makes it less likely that capable, dedicated people will come forward to serve as school governors.

2458. Secondly, I would remind everyone that the purpose of inspection is not punitive. Neither the inspectorate nor the Department raise standards; schools raise standards. The purpose of inspection is to provide the evidence for schools to lead and drive forward their own improvement. That is the point of it.

2459. The third point is a more practical one. When we are placing those responsibilities on schools and governors, it is incumbent on us to ensure that they are equipped with the training, advice and support that they need. If an inspection is coming up, they need someone who they can turn to for advice and support so that they can prepare for it and then respond to it afterwards. That is why that is a core and very important statutory duty of ESA, and that is why, even in advance of ESA, colleagues in education and library boards, at the Minister's insistence, are moving ahead with the development of the governors' support service. That is needed now, and we cannot wait for ESA. It is essential that we provide that support for governors, so, notwithstanding the pressures and

- difficulties that education and library boards already face, the Minister has made that a priority.
2460. **The Chairperson:** Chris, I want to clarify a point on clause 10. Clause 10 states that:
- “Schedule 3 makes provision for the transfer on the appointed day of staff employed by the Board of Governors of a school to which this section applies”.*
2461. It continues:
- “This section applies to -*
- (a) voluntary schools, other than Catholic maintained schools; and*
- (b) grant-maintained integrated schools.”*
2462. Why not Catholic maintained schools, if, under clause 3, ESA is to be the employer of all staff?
2463. **Mr Stewart:** It is a technical reason, Chair; there is nothing sinister in it. Teaching staff in Catholic maintained schools are employees of the Council for Catholic Maintained Schools (CCMS), and there is another clause that transfers all employees of CCMS to ESA. Non-teaching staff in Catholic maintained schools are employees of education and library boards, and there is a clause that transfers all those employees to ESA. Clause 10 deals with those employees for whom the current employer is the board of governors: voluntary grammar schools and grant-maintained integrated schools.
2464. **The Chairperson:** Chris, do you want to make any comments on anything that you have, perhaps, taken a note of?
2465. **Mr Stewart:** No, Chair. I think that, in coming weeks, members will be sick of the sound of my voice. I will limit myself now.
2466. **The Chairperson:** That is assuming that that is not already the case.
2467. **Mr Stewart:** Members are far too polite to say, Chair.
2468. **The Chairperson:** Personally that is not the case. I will clarify that, for the record.
2469. Earlier, we took the decision not to proceed with the clause-by-clause scrutiny, because, to date, we have not seen what is proposed by the Department. I suppose that correspondence will go to the Department to make you aware of the Committee’s view. We feel that these things are interrelated and interconnected. Clause 10 is a prime example, and there are other provisions. We need a sense of the Department’s current thinking regarding, for example, the heads of agreement. You said that more work needed to be done on that. We need to see what the Department has done and how it has tidied that up or whatever, if it has. On that basis, we can proceed. That is where we are at the moment.
2470. **Mr Stewart:** That is a fair point. In case he is listening, let me make it clear that that is not the Minister’s fault. Some time ago, the secretariat provided us with a very helpful summary of all the points that were raised with the Committee by stakeholders on which you would find it helpful to have a response. We have been a bit slow in turning that around, but it has now been approved by the Minister, at least for Part 1 of the Bill, and it will be with the secretariat in time for next week’s meeting. The delay on that is mine, and I hold my hand up to it. We trust that that will give you an indication of the Minister’s thinking on many of the issues that have been raised, but perhaps not on all of them. As I said, there are some issues on which the Minister has indicated that he has an open mind and on which he wants to hear the views of the Committee and stakeholders. There are others on which a little bit more work needs to be done before the position becomes clear. The Minister is certainly conscious of the Committee’s desire to learn of the Department’s position, and we will be working towards that as best we can in the coming weeks.
2471. **Mr Lunn:** Chairman, you mentioned the heads of agreement. Two or three

weeks ago, we agreed to write to all three Ministers to get their views on the inconsistencies between the Bill and paragraph 10C of the heads of agreement. Is it time for a reminder?

2472. **The Chairperson:** My understanding is that we have not received a response, but we will clarify the situation before next week. The deadline is this week.
2473. **Mr Stewart:** The Minister is very conscious of the Committee's desire to know what the thinking is on the way forward on that. I think that he would want me to assure you that the Committee's correspondence has not gone unnoticed. There is work and thinking ongoing on that issue. It is not yet at the point where the Minister has a proposal or a suggestion that he wants to put to you, but work is going on.
2474. **Mr Lunn:** With some hesitation, I will say that it is not Chris's Minister I am worried about. [Interruption.] I will say it a bit louder: it is not Chris's Minister I am worried about.
2475. **The Chairperson:** Would you like to specify?
2476. **Mr Lunn:** We wrote to three of them.
2477. **The Chairperson:** OK. Thank you very much, Chris. As always, we appreciate your time. Thank you.

6 February 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Declan Campbell	<i>Northern Ireland</i>
Mr Martin McAuley	<i>Youth Forum</i>
Miss Rhiannon Ní Cheallaigh	
Mr Chris Quinn	

2478. **The Chairperson:** I welcome to the Committee representatives of the Northern Ireland Youth Forum. With us today are Martin McAuley, the chairperson; Rhiannon Ní Cheallaigh, the vice-chairperson; Chris Quinn, the director; and Declan Campbell. You are very welcome. I am personally pleased that, in the very short time you had to consider the invitation, you were able to turn it around and come to us this morning. Genuinely, the fact that you are the last group to make a presentation in the evidence sessions on the Bill is in no way a reflection of where we see young people and youth services. In a sense, having heard all that has been said by others, it gives you a prime opportunity to inform the Committee of your concerns and issues with the Bill, particularly how it impacts on young people.
2479. Thank you for coming and for the time you have taken. Martin, we are in your and your colleagues' hands. Do not feel intimidated by any of us. We feel more intimidated by you. We are open to hear your presentation, and members will have questions. Thank you.
2480. **Mr Martin McAuley (Northern Ireland Youth Forum):** Mr Chairman, thank you very much for the opportunity to speak with you today. As always, I thank members for their time, and we value the opportunity to have meaningful dialogue with decision-makers.
2481. It may be in order for us to first make some brief introductions on who we are. Given the subject matter of today's discussion, we will give our educational background so that you may have a flavour of the area that each of us, as young people — our director is not so young any more — has come from. *[Laughter.]* I will start off. I am the chairperson of the Northern Ireland Youth Forum. I went to Holy Cross Boys' Primary School in Ardoyne and then St Malachy's College in north Belfast. I suppose that I should declare an early interest in that I am a member of the board of governors of St Malachy's College. However, I am here as the chairman of the Northern Ireland Youth Forum, and I will try not to allow my membership of the board of governors to influence anything I say.
2482. **Miss Rhiannon Ní Cheallaigh (Northern Ireland Youth Forum):** I am the vice-chair of the Northern Ireland Youth Forum. I attended Bunscoil Mhic Reachtain and Bunscoil Bheann Mhadagáin. I now go to Little Flower Girls' School.
2483. **Mr Declan Campbell (Northern Ireland Youth Forum):** I went to Holy Cross Boys' Primary School in Ardoyne and St Gabriel's. I am here on behalf of Challenge for Youth.
2484. **Mr Chris Quinn (Northern Ireland Youth Forum):** I am the director of the Youth Forum. For the record, my educational background was St Bernard's Primary School, Edmund Rice College and St Malachy's College. I am here now for my sins.

2485. **Mr McAuley:** It may be useful if we give you some background on the Northern Ireland Youth Forum as an organisation, although I am aware that some of you probably know of our work anyway. The Northern Ireland Youth Forum was established in 1979 by the Department of Education to act as a direct link between young people, the Minister and the Department. Put simply, our role is to empower young people and give them access to decision-makers such as you. Our core aim is to promote the voice of young people and make their voice heard at the heart of government.
2486. I suppose that if I was to sum up the work of the Youth Forum in one word it would be participation. With that in mind, I have to say that, generally speaking, our main concern about the Bill is the element of participation within it. It is no secret that our education system is long overdue a serious exercise in scrutiny and overhaul. However, where there are opportunities to really change the ethos of education here and shift the focus on to the active participation of young people, the Bill, in its current form, misses out somewhat, but not such much that we cannot change that before it achieves passage.
2487. There are areas of the Bill that we are particularly concerned about, where the lack of emphasis on the role of young people, who are the primary service users, in shaping the system is most evident. That is particularly evident in clauses such as clause 28, but we can go into that in more detail later.
2488. We also have concerns about the lack of focus on youth services at all. We have to remember that this is a Bill of 69 clauses and eight schedules, with a further 75 clauses in those schedules. Of those 144 would-be legislative provisions, youth services form the basis — I use that term lightly — of three provisions. Youth services are often described, fairly or not, as the neglected sibling of education, and I think that this Bill only furthers that impression. Given that the only piece of legislation to be repealed in its entirety by the Education Bill would be the

Youth Service (Northern Ireland) Order 1989, we would expect something more concrete to have been provided to fill the gap. However, again, that is something that we can come back to.

2489. As was the case the last time we gave evidence to the Committee — I apologise to those members who were not assigned to the Committee at that time — our primary concerns remain the involvement of young people in the policymaking sphere. Nowhere should that be a greater priority than in education, yet that is simply not the case. I am sure that members are aware that the UK and Ireland are signatories to the UN Convention on the Rights of the Child, and I hope that I will not patronise you too much if I take the liberty of quoting from article 12 of the convention. It states:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

2490. What we have here is an opportunity to strengthen children’s rights in domestic legislation. In 2002, the UN Committee on the Rights of the Child noted about Northern Ireland:

“school children are not ... consulted in matters that affect them.”

2491. It called for:

“further steps to promote, facilitate and monitor ... meaningful and effective participation of all groups of children”.

2492. Whatever way you look at that, it is a damning indictment of our failure to uphold our responsibilities under article 12. In 2008, the Committee again reported and stated:

“Participation of children in all aspects of schooling is inadequate”.

2493. The next time the Committee reports, I do not want to be in the position of it continuing to highlight our failures in this area.

2494. That is the backdrop to the participatory deficit that we think remains largely unaddressed by the Bill. Actually, in some cases, there is a cycling back of participation.
2495. I think that it would probably be useful if we explained some of our specific concerns about the Bill. We start, quite largely, with clause 28. Clause 28(1) and 28(2) impose a duty on the Education and Skills Authority (ESA) to consult with sectoral bodies, youth service providers and educational service providers. Of course, that is to be welcomed. However, we cannot fall into the trap of allowing ourselves to think that the views of service providers — teachers and youth workers — will be equivalent to the views of young people. Youth workers and teachers may, in some cases, have their own particular agenda. I do not use that term in a very negative way, but it is an agenda that simply will not be there with young people who just want to have their voice heard.
2496. Clause 28(4) states that ESA may consult with a range of stakeholders, and the list includes young people. That creates a clear dichotomy between service providers on one hand and service users on the other, giving less weight to the latter. We would argue that in drawing up area education plans, which have the unfortunate acronym of AEPs, there should be a duty on ESA to consult with young people. I note that, when the Department was giving briefings on the Bill, Mrs Dobson asked questions about that disparity and why there is no duty to consult with young people. As far as I can glean from the information, the response was that it would be impractical to consult with every young person. The problem I have with that response is that this provision does not allow for consulting with every young person. In fact, it would mean that ESA does not have to consult with any young people if it does not want to. That is where we have even more serious concerns.
2497. Members, you will have to forgive me. As a law graduate, I sometimes think with a very cynical mind.
2498. **The Chairperson:** There are no cynics on this Committee. Speaking impartially as the Chair, I have never known it to be cynical.
2499. **Mr McAuley:** I can tell; it is always the case when we come here.
2500. When reading through the Bill, I was initially perplexed about why the legislation contains a prescriptive list of groups that ESA may consult with. Surely, if the board of ESA had a mind to, it could consult with anyone — young people, old people, tall people or short people — it wanted to. Why include a list of people that it might consult with but has no duty to? Therein lies the point. We have deep concerns that this provision legislates for the notion that there is no duty to consult with young people on area plans. We have concerns that the provision is an exercise in covering the back of decision-makers, in case, in say two years' time, a young lad from Lurgan comes along and asks why there was no consultation with him or with young people on his local area education plan. The decision-makers could point to the legislation, which states that there is no duty to consult with young people anyway, and say, "Sorry about that. We went and asked your teacher, and they said that you were happy with it." That is the kind of problem that we face. I am sure that you are also aware that the Education and Libraries (Northern Ireland) Order 2003 made it a statutory requirement for a board of governors to consult pupils on changes or revisions to policy. Why then should there not be a similar statutory duty on ESA to consult pupils and young people on area-based plans?
2501. The last time that I appeared before the Committee, I quoted Phil Scraton, a lecturer in criminology at Queen's University and a former chairman of Include Youth. I think that that quote remains valid here in the same context. He said:
- "Lack of consultation dominates the private and public domains that contextualise children's lives, reminding them that active*

participation in the decisions that define their destiny ... is for adults only."

2502. That is the very thing that we struggle to challenge daily, and this is a real opportunity to help all those who are engaged in that struggle.
2503. There are other areas of the Bill where we believe that the participation of pupils could be greatly strengthened: for example, the appointment of school governors as re-legislated for under clause 39. We propose that that provision could be amended to provide for the specific appointment of a young person to each board of governors, and I hope that members are not recoiling in shock too much at that suggestion. It draws on a recommendation of the Committee from its inquiry into school councils, which was that a governor in each school should be identified to deal with engaging with the school council. We suggest taking that a step further and appointing a pupil to sit on the board or governors, because there can be no stronger link between governors and the student body if a pupil is there and represented. It is worth noting that that position was supported by the Children's Commissioner when she gave evidence on the inquiry into school councils. Furthermore, a Department of Education advance briefing paper to the Committee during the inquiry suggested that pupil membership of school boards of governors would increase effective student engagement. Now that the structure is being recodified, is this not the perfect time to translate those calls into action to prove that the commitment to engaging with young people goes beyond lip service?
2504. In the same vein of participation, we argue that a space should be reserved on the board of ESA for — [*Inaudible.*] I am sure that your eyes are rolling at this stage, because you are probably sick of hearing from interested groups about why they should be represented on the board of ESA and having them ask why they are not there and someone else is. However, there are clear and compelling reasons for the involvement of a young person on the board beyond those that

we have already talked about with regard to participation.

2505. As previously noted, the Bill strips away the Youth Service (Northern Ireland) Order 1989 and legislates for the removal of the library boards in favour of the Education and Skills Authority. Through the library boards, young people had a channel to voice their opinions on service delivery and to effect change through youth councils. When the boards are dissolved, the mechanism for that engagement will also dissolve, and the legislation provides no concrete replacement. In fact, the Bill erodes a way for young people to have their voice heard, and we believe that that could be compensated for by placing them at the top of the policymaking sphere and having their ideas dripped down through the structure.
2506. Lastly, we argue that there needs to be a sectoral body for young people. As noted earlier, there is a duty for ESA to consult with sectoral bodies under clause 28, and, although a range of educationalist sectors will be accommodated, there is no recognised body to represent young people in that way. A range of bodies is funded by the current Youth Council to involve young people, and we are a prime example of that. It would be very prudent and forward-thinking to recognise a body to represent the views of those young people who do not yet have the capacity to give effect to the rights that we hope will be entailed in an amended version of the Bill.
2507. I am sure that you can see that our primary concerns with the Bill are that young people should be afforded the space to participate in one of the systems that will most keenly affect their development. I can quote no better authority than the Department in its most recent advertising campaign:
"Education works better when you get involved."
2508. Therefore, allow young people to get involved. Challenge the notion that only adults know what is best for young people; otherwise, the model may as well be:

- “Education works better when you are not involved.”*
2509. Those are our main concerns. If I have left anything out, Rhíannon, Chris or Declan will be happy to add it.
2510. **Mr Quinn:** When we looked at this closely and prepared for today’s presentation, we looked at Finland as a model, because we are told that it is one of the best educational models around. There are many things that we could learn from the Finnish model that Marty has alluded to, and that goes back to young people driving the agenda. We talked a lot, internally in the Youth Forum, with other young people about the curriculum itself. We looked at how, in Finland, there is not one curriculum but over 3,500 curricula. Those are shaped around the pupil and the parents and what the young person’s desires are for their career. In Finland, the curriculum is delivered in such a way that every school is a good school. The Minister talks about that concept, and we agree that we should be aiming for that. As such, in that school system, if you want to study a certain curriculum or a certain subject matter, you can do so between schools. That is not a big issue.
2511. We also looked at how the curriculum was designed. We found evidence from Ken Robinson, who does a lot of lectures on the education system. He alluded to the fact that the curriculum was first designed at the time of industrialisation, so the key subjects were those such as maths, English and science. Those are very important, and we see the importance of them, but Ken Robinson also argues that there is the need to develop and invest in creativity and innovation. Especially in the present times of recession, we talk about the need for innovation. We felt, as did the young people we work with, that, because of the way the curriculum is delivered, it is often the young people who are really academically talented who excel. People who are good at maths, English and science will, ultimately, do well at school here, and that is fantastic and great for them and the schools.
- Often, many other children and young people are left behind. Currently, the system fails so many other young people. We believe that involving young people in curriculum design could help to shape the system. We think that, further down the line, that would have an impact on the problem of unemployment and young people who are NEET.
2512. **Mr D Campbell:** I want to add something about the voices of young people being heard on the boards of governors. When I was at secondary school, I did not get a voice. My voice was not heard. In my view, it really did affect my education. I have found that youth services, which are being left out from the Bill, have benefited me a lot. Young people should have a bit more of a voice on the board of governors. It is their life, so why should they not have a voice in it? It is their future.
2513. **Miss Ní Cheallaigh:** Clause 16(1)(a) and 16(1)(b) states that it is the duty of ESA to provide adequate facilities for education and youth activities. Although it says that there will be adequate buildings and services, it does not say what is meant by adequate. For instance, are Portakabins considered adequate for the school to be running? Is not having enough classrooms for the school to be allowed? The Bill does not state what is adequate, so would it not be easier to ask young people for their view on what is adequate?
2514. **The Chairperson:** Thank you, Chris, Martin, Declan and Rhíannon. The process that we will commence today, in an informal way, will be to go through the clauses of the Bill. In the next number of weeks, we will go through each clause. You made specific reference to clause 28 and other elements of the Bill. After this presentation, we will have one of the senior civil servants from the Department, Mr Chris Stewart, who dutifully attends this Committee every week along with his colleagues. They have been here and have heard the comments that you made and, from the Department’s point of view, will be able to give some response to that, which will be useful. On the issue of consultation

and of you having a sectoral body, clearly, we have issues around consultation and who will be consulted about the future provision of schools. We will come to that and take on board the issue that you raised.

2515. I want to tease out a bit around the fact that the Youth Forum is a non-departmental public body. Chris, I do not know whether you received a phone call yesterday from a gentleman regarding the 1972 order.

2516. **Mr Quinn:** I did, yes.

2517. **The Chairperson:** I was going to give him the number for another Chris and ask him to ring him, but I decided to give him your number because it was about youth service and voluntary involvement. I did a bit of work about where it sat with the 1972 order. I am not that clear about it, because it seems to have been subsumed into the 1986 order around youth provision, which is now having an impact on this legislation. As a non-departmental public body, as things stand, do you feel that you have not been consulted, listened to and had your views taken on board? That is crucial, because some bodies, as they currently stand, will continue to be non-departmental public bodies after this Bill comes into operation. How do you view where you have been in all of that? I am taking into consideration Martin's points about feeling that you have not been consulted. Can you try to tie those two things together for me so that we have some idea about how your organisation currently sits in relation to how those things operate?

2518. **Mr Quinn:** The previous time that we attended the Committee, we raised that very issue. We received notification from the Department that changes would be made to the way that we were funded, to our position in the sector and to our links to the Minister. That was the key issue that we wanted to raise. At that time, we did not feel that we had been consulted adequately. Thankfully, we worked with the Department, the Minister and the permanent secretary at the end, and we came to some kind of

arrangement. They sort of acknowledged that they perhaps had not gone about it the right way, and there was, at least, an interim period set up. Generally, where we sit, there is a degree of uncertainty. We have our usual notification from the Youth Council for Northern Ireland that we probably might get funding in the next year, but there are no certainties. That is the way that it has been for the past three or four years, and, as a sector, unfortunately, we get used to working that way. It is not ideal. We need certainty.

2519. Putting a more positive spin on the Bill, we have waited a long time for the Bill to come through, and it will help. It will provide stability and certainty, and we look forward to that. As a youth forum, we are pretty confident that we will continue to be in existence regardless. We have proved that there is a need. We have proved that young people want to engage through a youth forum, and we have proved that we can secure funding from a variety of sources to do that. We aspire to have a strong link with the Department and the Minister and Committees such as this one. As Marty said in his introduction, we believe that direct engagement between young people and the decision-makers is a key part to participation. We are pushing hard for that, and we feel that the ESA Bill and the Priorities for Youth policy should include strong legislation. It should not be grey and say that "we might consult" but that "we will consult" with young people and the youth service and that there will be a direct link. Does that answer your question?

2520. **The Chairperson:** Yes. You have basically come to the point where you feel that there is an arrangement as opposed to a relationship between you and the Department. I assume that you have to prepare a business case for anything that you propose to do, as opposed to receiving grant aid from the Department, which are two very different types of ways in which you can receive funding. Clearly, your current situation is that, if the Department decides that it will give you money, it will do so, but,

- on the other hand, if it decides not to, it has no duty to give you what you require. For members of the Committee, that is an important issue when we look particularly at the arrangements and the structure of sectoral bodies.
2521. On the issue of consultation — I appreciate what you said about clause 28 in relation to the duty to consult — from your perspective, how do you feel that you as an organisation can advise? This point was raised in our previous presentation on teachers' pay. There is a proposal to change teachers' pension arrangements. We have thousands of teachers, but only 14 teachers replied to that.
2522. How does your organisation go down the food chain and ensure that as a forum you accurately reflect the issues that are relevant to young people? Do you find trying to really engage with young people a problem? I know that you are all very enthusiastic about what you do at the board level and the forum level, but how do you feel that is down at the grass-roots level? I think that it is important for us to understand that as we look at the whole issue of consultation.
2523. **Mr Quinn:** Every week, I get umpteen letters from Departments and other public bodies saying that there is a consultation on whatever. Everything we do is youth-led, and that is the way that we as an organisation approach it. Young people advise us as the staff team what the strategy and direction are and the key issues on which they want to engage. So, traditionally, young people drive the agenda on which consultations we respond to.
2524. The challenge for us, as people who support young people in that process, is to ensure that it is meaningful. It can be very challenging. For instance, how do you turn the Bill into a document or use language that young people will be able to respond to in a meaningful way? So, that can be a difficulty, and it takes a lot of time, energy and resources to do that.
2525. I think that there is a degree of consultation fatigue out there. You have probably heard that over and over again. Again, it is back to that meaningfulness. If people feel that their input has been meaningful, they will feel valued and respond to consultations again. For me, a big part of that is about feeding back, and we do not often receive that feedback.
2526. I want to go back to what Martin said when he alluded to young people's voices dripping down through the system. We believe that that is key to solving consultation fatigue. Consultation should not happen at the end of a process. It should not just be the tick-box exercise at the very end. If you are making policy, that policy should reflect the needs of the people whom it is about. That is why, in theory, area planning is a positive thing. If we plan on an area basis, based on the needs of people, and young people are part of that, that would be positive. What we do not want is a consultation process at the end of a planning process. It is about having the stakeholders at the table at the very start. Like Martin said, we would argue that young people should be at that table.
2527. **Mr McAuley:** We would even argue that young people can lead the way on consultation.
2528. We recently did a survey for the UK Youth Parliament in Northern Ireland on the most important issues for young people. Our perspective was that that should be youth-led. Young people should be going into their communities and asking other young people what their issues are. It is very easy for a young person to feel manipulated when they are in a room with a youth worker who may want to get certain items on the agenda for young people. However, if you send young people into their community and get them to talk to one other, you will get a much more realistic reflection of what their issues are.
2529. More than 12,000 young people responded to our survey. So, we are skilled at involving young people at

every level of the process and at getting uptake in great numbers.

2530. **Mr Kinahan:** Thank you. I have found this fascinating. Given what I have seen in education, I have felt all the way through that we are leaving youth out. So, I am very keen to hear what you say. I note from your figures that you engage with 30,000 young people. I think that the Priorities for Youth consultation got out to 80,000 on the formal side and to something like 300,000 more informally. How do you see yourselves being able to expand and get out so that you are representing and pulling together youth from both formal and informal settings and everywhere? It is a huge task. Does that mean that funding is needed? It is something that we have to get a grip of and get involved. That is one question: how do we help get you there? The other is then to make sure that when we have got you there, if you are talking about boards of governors, which I think is an excellent idea, the church is involved, politicians are involved, teachers are involved and parents are involved. You are asking for one of youth, yet we do not want to double up. How do you see selection, even if it is one person or a substitute or two, so that you always have representation? How do you see actually choosing the person to go on the board so that it fits in with the ethos and allows you to check it through?

2531. **Mr Quinn:** On the first question, we talk a lot in our sector about partnership working and cross-sectoral partnerships. That is crucial. To be fair to the Department, it has recognised that we have a really strong, vibrant voluntary sector, which, for many years, has helped in reaching many young people. There are lots of organisations at a grass-roots level doing fantastic jobs. We also have a number of regional voluntary organisations, which are reaching out locally, regionally, nationally and internationally and doing fantastic work.

2532. The challenge for the Department is to continue to recognise the contribution that the voluntary sector is making and continue to support it. You talked about

funding being a challenge. I have been in youth and community work for 15 or 16 years now, and that has always been the challenge. On the one hand, you are trying to effect social change and trying to work with people at a grass-roots level, but, on the other hand, you are looking down the line and seeing when your funding runs out and where you are going to get it from. So, it has always been a challenge, and, thankfully, it is something that we as a sector are pretty good at. However, what the Department could do more of is investing in voluntary and statutory sector relationships. There is about £30 million or £29 million for youth services as part of the education budget, and Marty quite rightly said that we are often seen as the Cinderella service. On the other hand, if you look at it like the deposit on a mortgage, there is a huge amount of money that we can use to lever in additional money from Europe and other places. If the Department were to put more recognition on the importance of core funding for groups such as us and local community groups, it would go a long way to the sustainability and reaching more young people.

2533. In respect of the representation, I suppose that is always a challenge in any walk of life. We work with a huge diversity of young people, and what we tried to do today was bring you a selection of people to demonstrate to you the diversity of the young people that we work with. Martin here has gone through a grammar school education. The education system has been really good to him, if you do not mind me making that assumption.

2534. **Mr McAuley:** That is fair.

2535. **Mr Quinn:** He has come through, and he is a law graduate. We have Rhiannon, who came through Irish-medium education and is now in secondary school. She is doing her school very proud in her Little Flower uniform today. We have Declan, who came through secondary school education. He got involved with us through the Champions 4 Change programme, which was to engage with NEET young people.

2536. I am trying to demonstrate to you that that representation is possible. It is about using all that expertise and the resources that you have to reach widely and work in partnership to ensure that we are opening doors for young people to take opportunities like today's and to otherwise ensure that you have representation. When you look at boards of governors, which we are pushing for, or the board of ESA itself, it is up to us as practitioners to support young people so you do not always have the A* student on the board, so that there is support there for other students and young people to have their voices heard at that level.
2537. **Mr McAuley:** We are currently engaged with the Commissioner for Public Appointments in work towards making the system much more accessible to young people. We both identified a need for application forms for selection panels to be much more accessible. For any young person, or anyone up to the age of 30 or 40, an application form for a public appointment is a pretty daunting prospect. So, we are working with the commissioner to try to develop more young-people-friendly versions of those application forms and to train people on panels to be aware of how they should engage with young people and how they can get the best out of them at an interview situation.
2538. **Mr Hazzard:** Thanks to everybody for the briefing so far. I have been fortunate enough to attend a few consultation events where the Youth Forum has been present. Without annoying any of the other groups, you have always been the most vibrant and challenging and the ones driving the arguments for change at the table. So, it is very welcome that you are here today. The vote at 16 was just the same, so hopefully we will see a lot more of that in the years to come.
2539. I am interested in the proposal for boards of governors. It sounds fair and very interesting. I want to pick up on Danny's point about how it would work logistically. Also, Martin, what about your experience on the board? How did it benefit not just you as a young person but the actual school itself? Secondly, I agree that young people should, at the very least, have their voices heard on the ESA board. If that is not possible, what is the next best thing? How do we go about making sure that young people's voices are heard?
2540. **Mr McAuley:** Thank you for those really kind words at the beginning. It is an interesting prospect being a young person on a board of governors, because a lot of young people would not see me as a young person anymore. However, comparatively, if we lined up all the members of boards of governors, there would be quite an age gap by the time you got to me. There is an interesting dynamic there, because there are people coming at it from an educationalist point of view, which is extremely necessary, and there are people coming at it from a parenting angle. Having come into a board of governors, you notice quite quickly that there is this deficit of a young people's view. These people do not understand the perspective of people who are going to the school or who have just left the school. I only left St Malachy's about four years ago, so the memories are still almost fresh: they are starting to linger, but they are still almost fresh and I can remember what it is like to be a pupil at the school. That is of huge benefit, because if you go to any school and ask any of the pupils whether they can name one of the governors, you will struggle to get one in every 30 schools you ask who are able to name one of them. That is a problem, because young people feel disengaged from the people who are running their school and setting policy for them.
2541. It was really interesting to read the investigation into schools councils, because there is sometimes even a disconnect between pupils and their student councils. Then, there is even further disconnect between the student council and the board of governors. So, even when there are mechanisms in place to engage with young people, some of them are, to call a spade a spade, tokenistic and are there to say,

“Look at us, we have a schools council. Aren’t we great? We’re consulting with young people.” Yet, that is not happening in practice. So, there is a deficit of participation in schools. Who is more important to consult with on education or something that you are going to do in a school than a young person? It is really strange that it has taken so long for us to get to the stage where we are seriously talking about including young people in that way.

2542. **Mr Hazzard:** That is an important point, especially when we are talking about extending the roles of boards of governors and the importance that boards of governors are going to take on in very many aspects. It will be very important to make sure that the voices of young people are heard and are at the centre of that process.
2543. **Mr Quinn:** Chair, I will take up your second question about the board of ESA, because it was something on which we had engaged, tentatively at least, with the Minister and his advisers around the notion of young people being represented at that level. As Martin said, we have had quite positive discussions with the Commissioner for Public Appointments on the whole issue of young people on public bodies, outside the ESA stuff. So, as an organisation, we tried to encourage and support as many young people as possible to apply to be on the board. In reality, that was quite a difficult task, because, as Marty said, the application process is not the most accessible to any person, never mind a young person. We also encouraged people in our sector to apply and act as advocates. That is not the ideal as we see it, but it may go some way towards at least having representation of young people’s voices at that top table. Something that I do quite a lot in my job is go along to various different boards. I am there not as Chris Quinn but as the advocate for the young people that I am working for.
2544. **The Chairperson:** Just on that point, Chris. In terms of the relationship or the interaction between what are seen as established bodies that purport

to represent sectors — because sometimes you find this right across the piece. There are organisations, and they have titles and they may have the perception that they listen to everybody’s views, but they may only have a very small or narrow view on particular things.

2545. Take, for example, the organisations that exist, whether it is the boards, the Council for Catholic Maintained Schools (CCMS), the Northern Ireland Council for Integrated Education (NICIE), Comhairle na Gaelscolaíochta (CnaG) or whatever. Of all those organisations, how do you relate to them and how do they relate to you? If we get to the stage of the ESA board, I think, from the number of requests that we have in as to who wants to be on the ESA board, I do not what building is going to hold it. I think that the Department will have to book the Odyssey for the board meetings. Clearly, it is going to be a very difficult job. However, do you have any confidence that those that are already there have any understanding, relationship or interaction with you, or even understand and know what the issues are as regards young people? That is a key element as well.
2546. **Mr Quinn:** It is hard to give a definite answer. We try to engage with as many public bodies and boards as we can, but, in saying that, we are juggling many balls.
2547. There are certain boards that we sit on. For example, we sit on the Youth Service liaison forum. We have also requested — and I know that probably the ship has sailed — in the past that young people should sit on the board of the Youth Council itself, or boards like that. A colleague of mine who is here today sits on the Northern Ireland Policing Board youth advisory panel. At that board we are pushing for young people to be there themselves, but we are not there yet. At least we have representation at an advisory level, but we are still pushing for young people to be on all boards.
2548. **The Chairperson:** That is something that we should note, in terms of proposals. I do not think there is, but if we were to

- give ESA the power — although some people would argue that we should not be giving it the power — in the famous clause 22 so that it can basically do anything, it could establish an advisory panel. It would give it the power to do that very thing. I am not saying that that is what you should aim for, but at least there would be something there that would be a comparator to an established organisation. If I am not mistaken, we have two members of the Policing Board sitting around this table. That board has a very challenging role, but it has made provision to listen to young people and have youth involvement. There is a model there, and that is useful.
2549. **Mr Quinn:** As I said earlier, we raised the point that it should not necessarily be me or my colleague sitting representing the views of young people. We would much prefer it if it was young people themselves. The youth advisory panel chair has agreed to raise that with the Policing Board, and the next time that it is appointing boards it should be raised at that level.
2550. **The Chairperson:** OK. I am sure he two members present —
2551. **Mr Craig:** Three.
2552. **The Chairperson:** Three? OK. There we are. I know two of them, but I am not sure who the third one is.
2553. **Mr Lunn:** The two of us and —
2554. **The Chairperson:** Oh sorry, Trevor. You are on the Policing Board too. You are a busy man.
2555. **Mr Lunn:** I am too quiet, you see.
[Laughter.]
2556. **Mrs Dobson:** That was a very well articulated presentation. Martin, I am hosting a public speaking competition tonight in the Senate Chamber and I think that you would be absolutely brilliant at it.
2557. I totally agree with your point that over a quarter of our population is being ignored in deciding the future of our education. I would also be totally supportive of your suggested amendment to involve young people on boards of governors. It is a great idea.
2558. I want to explore a bit more about the school councils. Do you feel that, if young people were represented on boards of governors, that would take school councils to the next level?
2559. **Mr McAuley:** Yes, absolutely. The last time we presented to the Committee, we very much focused on the idea of connectedness and meaningful dialogue. A lot of the complaints we hear from young people about school councils are that they are almost meaningless. They go along, and there is a teacher there to supervise it. They say, can we have this, and the teacher says “No, that is not feasible. You can’t do that”, and that is the end of the discussion. Even if something is not feasible we would expect schools to have that discussion with young people, tell them the reasons why they do not think they can do it but that they will bring the proposals to the board of governors anyway. That is happening in very few schools where you are getting that idea of connectedness.
2560. It is also about buy-in from young people. If they see a school council that cannot do anything or that, at the height of its power, can get one extra water fountain in the playground, they are not going to engage with it. On the other hand, if they see that a school is investing in its school council and saying that it wants to engage with them so much that it is going to give them a space on the board of governors and make that young person equal in decision-making capacity, that would be a huge sign to young people that they are being listened to. If they are being listened to, they will bring their problems and engage more readily with it.
2561. **Mrs Dobson:** I am a big fan and supporter of school councils. Do you see the setting up of schools councils — you talked about their powers — as perhaps the duty of the student who serves on the board of governors? If that were to be implemented, that

- would be their duty. As you said, that would show that they were making a difference. Would you like that to be designated to that student?
2562. **Mr McAuley:** Absolutely. I think that the two ideas almost sat in isolation, if you like — that there would be a student council and that there would be a governor to engage directly with that student council to give it legitimacy and get that feeling of connectedness. If we are talking about appointing young people to boards of governors, it makes absolute sense that young people would connect to other young people. If a governor is coming down from on high to listen to their views — that is what it will feel like to young people on a student council — it will be very difficult for student councils to engage in a really meaningful way. If, however, Johnny in class 3B is a member of the board of governors, they will be able to talk much more frankly and openly about their issues and have confidence that those issues will be relayed in their entirety back to the board.
2563. **Mrs Dobson:** Are you aware of any examples of young people playing active roles on boards of governors in any other countries? You spoke about Finland, Chris. Are you aware of this happening?
2564. **Mr Quinn:** No, Jo-Anne, I am not aware of that happening.
2565. **Mrs Dobson:** It might be useful to explore that, see what has happened in other countries already and whether any lessons could be learned from that.
2566. **Mr Quinn:** Again, the crucial thing is that meaningful engagement. In the Youth Forum, we talk a lot about supporting young people and the youth-led model. We spend a lot of our time and energy supporting people like you see in front of you today and in delivering that participative model.
2567. The schools council model was something that we talked a lot about before we came here today. Should we be making a recommendation around legislation for schools councils? We knew that that debate had already happened and that there was discussion around potential legislation, and that was one of the reasons why we did not propose it formally today. We are also concerned that just setting up schools councils does not mean that they are going to be meaningful. They need to have resources and support put into them to make sure that wee Johnny from 3B, who is the board of governors rep and is responsible for liaising with the school council, has the support to do that. Wee Johnny from 3B probably also has to homework, exams, a family and might have a part-time job. It is important that someone in the education system supports that.
2568. **Mrs Dobson:** It appears to be the next link, and, as you said, it would engage others. I would definitely be fully supportive of that. Thank you.
2569. **Mr Rogers:** You are very welcome. I must commend you on your presentation. There are many boards of governors out there that would be very envious of having a young member like you.
2570. Following on from what Jo-Anne said, do we have many school councils that have a designated governor in the North?
2571. **Mr Quinn:** We have found no evidence of that.
2572. **Mr Rogers:** I am delighted that you are here. The two important groups of people that education affects are left out of this Bill: parents and young people. Research tells us that up to 80% of your education takes place outside your school. When children are young, parents are up there as the prime educator, but, as the child gets older, the community that they live in, the youth club and the football or camogie team or whatever that they play with become very active in that. Really, my question is to do with area planning. In terms of having an active voice for young people in area planning, do you see that there will be a possibility that, even within these sectoral bodies, they would have designated youth representation?

2573. **Mr McAuley:** Absolutely. In the absence of a recognised sectoral body for young people, there absolutely has to be some representation for young people on community groups and on bodies that are involved in area-based planning. That can only complement what they bring to the table anyway, because if, on the one hand, they say that this is what we do and this is the angle that they are coming from, but on the other hand here are a group of young people who are service users, and this is what they think, it adds another string to your bow, if you like. It cannot be a bad thing.

2574. **Mr Quinn:** We have had tentative conversations with people such as the Northern Ireland Local Government Association (NILGA) around the idea of shadow youth councils. We have talked to various local authorities over the years, and at one stage we were involved in a lobby for legislation to be passed that was similar to schools council legislation so that every local authority should have a shadow youth council. We see that as part of the community planning and area planning picture, and we hope to continue to have conversations with the relevant people in those various sectors. That is one mechanism whereby young people can be involved in the community planning and area planning process, because, of course, you are going to have statutory providers and voluntary providers. The obvious missing part of that jigsaw is young people themselves.

2575. **Mr Rogers:** I know that this youth voice works, because I remember that, in my previous role as a principal, we looked at the changing of the school uniform. Very often, in the past, the uniform was changed and people were told about it, but in our school, we involved the girls in changing the type and length of skirt and the boys in changing from a grey shirt to a white shirt. Once young people were involved in that and felt that they had a role to play in changing that, there became fewer problems with actually wearing the uniform.

2576. **Mr Lunn:** I am sorry that I missed part of your presentation, but I heard plenty.

Like all others here, I congratulate you on your approach to this. It is very refreshing.

2577. I want to ask you about clause 28 specifically, which is on area planning, and the lack of consultation. Ideally, you would like to have your own sectoral body, and that would bring in the duty of ESA to secure the views of that sectoral body in the preparation or otherwise of area plans. In the next two or three months, there is going to be a lot of discussion about sectoral bodies, and, frankly, my impression is that, at the end of it, there will not be any new sectoral bodies, frankly. So, there must be some other way that you can suggest in which clause 28 could be tinkered with to provide a strengthened requirement on ESA to consult with young people. The duty part of it says that ESA must consult with:

“(2) Those persons are persons appearing to ESA to represent the interests of —

(a) providers of youth services”.

That is a starting point. Further down, it states that ESA may make arrangements to consult with:

“(5) Those persons ... appearing to ESA to represent the interests of —

(a) children and young persons living ... in the area;

(b) persons for whom educational services are provided in the area; ...

(d) the parents of children or young persons ...;

(e) ... providers of educational or youth services”.

2578. It is fairly wide, and it is hardly realistic to start to refer to specific organisations, because there are a lot of them. If you can recognise that, frankly, it is unlikely that you will get the sectoral body — it is not up to me, otherwise you would get it — what specific amendment would you like to see to that clause that would give a level of satisfaction? Do you have any thoughts about that while we are sitting here?

2579. **Mr McAuley:** I suppose that if we were really to press you about one particular amendment to clause 28, it would be the change that we explained about the dichotomy that exists in that clause between education and youth providers and service users. It creates these two tiers where ESA will consult people who are providing the service, but it may consult if it wants with people who are using the service. We can solve that quite easily by imposing a duty on ESA to consult with young people in general. If that means that when area education plans are being drawn up they go to a local youth council, or it engages with pupils from local schools, then that satisfies me that young people are being engaged with. As it stands, if ESA is saying only that it may consult young people and parents — equally, when I talk about young people here, the same argument applies to parents — in my very cynical, legal mind, that reads that it is saying that it may not consult young people and parents, and there is nothing that you can do to force it to do that.
2580. **Mr Lunn:** I agree with you. It does not actually say in any form that I recognise that ESA must consult young people. It talks about the providers of youth services and the parents and so on. If the second part, where it says that “ESA may make arrangements” was strengthened to become a duty, and if a form of words could be developed — I am trying to get the difference between consulting persons representing the interests of young people and actually consulting young people themselves. I really do not know how you could draft something that says that ESA must consult with young people, given that there are 400,000 of you. You might want to come back to us on that with a specific —
2581. **Miss Ní Cheallaigh:** There are many ways that it could consult young people. The use of social media would make it a lot easier.
2582. **Mr Lunn:** I am sorry, Rhíannon, I cannot hear you.
2583. **Miss Ní Cheallaigh:** It would be easier for it to connect with young people on social media. It could Facebook it or set up a Twitter account so that they could get people’s views.
2584. **Mr McAuley:** I suppose the point that Rhíannon is making — we discussed among ourselves in great depth about how you consult young people — is that it goes back to the departmental response that you cannot place a duty to consult young people because it is impractical to consult all young people. I do not think that we need a duty to consult all young people. Obviously, that is absurd, and no legislation in the world could enforce anyone to consult every member of a stakeholder group. Therefore, if we are just talking about imposing a duty on ESA to consult young people, I think that that is a fair clause to have, and it would read — to use legal speak — to a reasonable person that ESA will consult a diverse group of young people and not drag three young people off the street, or the sons and daughters of three ESA board members, and consult them. A reasonable person would assume that that includes a diverse group of young people. It is not going to be all the young people in a given area, but it is not going to be a small group of them either.
2585. **Mr Lunn:** I will be interested to hear what Chris thinks about that later on. The Bill does not say that ESA must consult teachers, for instance. It probably says somewhere that it must consult representative bodies, and that is the thrust of it, surely. At the moment, it places a duty on ESA to consult the providers of youth services, which is fairly strong. That would bring in your organisation, surely.
2586. **Mr McAuley:** We welcome the fact that ESA will consult educational service providers and youth service providers. However, the point that we constantly make, and which is really ingrained into our ethos, is that you can consult youth workers and teachers, but that is not equivalent to consulting young people themselves. Obviously, you welcome the fact that you are going to consult youth

- service providers as a stepping stone to getting to the place where you consult young people in a very meaningful way. However, we are saying that we are not there yet, and there is scope for us to get there if we have a few amendments to that clause.
2587. **Mr Lunn:** If you want to consult young people, the only practical way to do that is to consult a representative group of young people.
2588. **Mr Quinn:** Various things are in place at the moment. The Northern Ireland Youth Forum is one of those groups, and many others are doing a great job representing the views and supporting young people to represent their own views. I think that some time ago, Maria Eagle, under direct rule, talked about a network for youth. That is still talked about, as is how, through a youth policy, young people could be connected to the decision-maker. However, many questions remain. Much of the outworking could be within Priorities for Youth and, through the Youth Service — voluntary and statutory — young people could be supported to make that sectoral body. We would argue, quite selfishly, that the Committee is hearing from a sectoral body right now, but others would obviously want to engage in that process, too. There is potentially provision, through Priorities for Youth, to give us the outworkings of that. As Martin said, the change in wording from the potentiality of “may” consult to “will” consult is subtle, but it could satisfy what we are looking for in the Bill.
2589. **Mr Lunn:** Believe me that we have had many a discussion about “shall”, “must”, “may” or “will”. We have also had many discussions on how many sectoral bodies there could be in Northern Ireland, but it is always interesting to hear from you. Some organisations have come back to us with specific and legally framed amendments. Martin, you are the man to do this, so let us hear from you.
2590. **Mr McAuley:** I can see this landing on my desk already.
2591. **Ms Boyle:** You are all very welcome. I do not have a question. I just want to make a few comments. I will start by reiterating what the Chair opened with: you are the last to present evidence but by no means least. It has been very refreshing to hear your comments. To be honest, you are the only group to have said nothing that I disagree with, and I am sure that I speak for many members.
2592. If we want to make education work for our young people, it has to appeal to them. From listening to you, if we were not to involve young people, it would almost be like baking a cake and leaving out the main ingredients. That is the way that I see it, too. If we want to prepare young people for their future life, they have to be included in any discussions that take place, particularly on education, boards of governors, and so on. Schools and teachers do their best to represent our young people’s views, but they do not always put young people’s opinions or views across. Schools, teachers and boards of governors must address that in their establishments. I commend you on your work, and I certainly support your point of view. Thank you.
2593. **The Chairperson:** Thank you very much, Chris, Martin, Rhiannon and Declan. This has been a useful session, particularly in relation to clause 28. I notice that clause 28(5)(g) states:
- “such other groups or bodies as ESA may consider appropriate”.*
2594. If all else fails, that at least provides something to latch on to and be aware of. Your time informing the Committee has been well spent, and we appreciate your contribution. I trust that today’s session will not be seen as, nor is it, tea and sympathy, or us salving our conscience so that we can say that we did what others may not have. That is not how I want it to be seen because that is not how it is. We are happy for you to remain with us after this session as we begin the informal clause-by-clause consideration of the Bill. If we do well, we may even get to clause 28.

[Laughter.] I see some eyebrows being raised.

2595. Thank you very much, and I wish you all well in whatever your future may be.

2596. **Mr McAuley:** Thank you very much.

6 February 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Chris Stewart *Department of Education*

2597. **The Chairperson:** Before we go to clause 1, Chris, do you want to comment on anything that you heard from the Youth Forum this morning? We might try to keep that evidence in mind.

2598. **Mr Chris Stewart (Department of Education):** I thought that you might ask me about clause 28. The points and arguments were very well put, and, from the Department's perspective, our starting point is the same as that of the Youth Forum. We want to see the effective, not tokenistic, involvement of children and young people in the area planning process. However, all the discussion on the clause focused on only half the requirement, which was consultation. The wording of the clause, "consult and involve", reflects a strand of the argument that the Youth Forum makes. The intention is not simply to present any group of people with a decision at, or near the end of, a process, and say "What do you think about that?" The intention is that they should be involved from the outset, sitting around the table and making the area planning decisions. The reason given by the Department was accurately cited: what is the best way of doing that? Should it be a power or should it be duty? A "duty to consult" children

and young people would be relatively straightforward, and there are many ways of doing that. A "duty to consult and involve" children and young people raises the issue of practicality. How do you do that? Which children and young people, and how should they be chosen?

2599. In thinking about that and about how we might involve, as well as consult, various interests around the area planning table, it is the issue of practicality that makes the difference between those listed under the "duty" part of the clause and those listed under the "power" part of the clause. However, the intention is absolutely what the Youth Forum has argued for, which is the active involvement of young people around the area planning table.

2600. **The Chairperson:** Thank you, Chris.

2601. Let us go straight to clause 1, which establishes the name of the Education and Skills Authority (ESA) and applies schedule 1, which we will deal with later. For now, let us just deal with clause 1. As members can see from the table, a number of stakeholders wrote to the Committee, suggesting, for various reasons, that ESA be renamed. One stakeholder believed that the acronym might be confused with the European Space Agency. I think that that might be very appropriate. *[Laughter.]* Another said that ESA will have no remit to promote skills and should, therefore, be renamed. The Department has provided a response, which is included in the table. Does the Department have anything to add?

2602. **Mr Stewart:** I assure you that neither clause 1, nor even clause 22, empowers ESA to engage in space flight. We would take a very dim view of that. I do not think that there is much real chance of ESA being confused with the European Space Agency. The name has been in circulation for some time now and is well understood across the education sector.

- When we say “ESA”, people know what we are talking about.
2603. I think that we have made the Department’s position on skills known. Skills are not solely the remit of our colleagues in the Department for Employment and Learning (DEL). Skills are an important part of the curriculum delivered in schools. Boards of governors have an interest in ensuring that the curriculum is delivered effectively, and teachers have an interest in ensuring that pupils who follow skills-based courses enjoy success. I think that that could and should be reflected in ESA’s duties and in its name. It reflects the Department’s approach to the curriculum and what we mean by educational attainment, and it has been part of the landscape for quite some time. To change it now would cause confusion and call into question where we see the skills part of the agenda sitting in the schools-based curriculum.
2604. **The Chairperson:** Do members have any comments?
2605. **Mr Lunn:** I will comment on the acronym. There are dozens of examples of duplicated acronyms for different organisations. For a start, I can think of the Financial Services Authority and the Food Standards Agency. I do not think that anybody ever confused those. The Prison Officers’ Association and price on application is another example. Give me half an hour, and I will give you 20.
2606. **Mr Stewart:** Chair, I am told that, phonetically, ESA is also Irish for Jesus.
2607. **The Chairperson:** That is one that we did not know. That gives it a completely different perspective, although I do not think that conferring biblical powers on ESA would be wise.
2608. **Mr Lunn:** We need to hear from the Irish-medium sector. *[Laughter.]*
2609. **The Chairperson:** There are proposed amendments, but are members content to informally accept clause 1 as it is?
- Members indicated assent.*
2610. **The Chairperson:** Clause 2 places a duty on ESA to contribute to the development of children, young people and the community at large. ESA must co-ordinate the planning and delivery of schools’ educational services and youth services, with a view to promoting the achievement of high standards of educational attainment. ESA must also encourage and facilitate the development of education in an Irish-speaking school.
2611. I think that it is useful to group some of the proposed amendments, so we will consider the first four. I am trying to correlate what I have in my notes with what you have. All these proposed amendments refer to clause 2(2), which sets out ESA’s general duties.
2612. Some stakeholders wanted ESA to contribute to things other than the spiritual, moral, cultural, social, intellectual and physical development of children and young people.
2613. The first amendment would require ESA to promote shared education; the second would remove the reference to spiritual development from the clause; the third would require a level of curricular support to accompany the commitment to promote spiritual development; and the fourth suggests that linguistic development be added to the list of what ESA is to promote.
2614. Chris, do you want to comment?
2615. **Mr Stewart:** On the first amendment, which is perhaps the one that requires the most explanation, we understand the argument put forward. The Minister has said that he has an open mind on that and is prepared to consider it further.
2616. As I said in previous evidence sessions, it is important to point out that this is not a rights-based clause. There are those who argue that there ought to be an equivalent for integrated education in order to provide equal rights for that sector. This is not a rights-based provision; it is a needs-based provision, and it is a very practical one. It recognises that there are things that ESA needs to do for all schools,

- but needs to do them in a particular way for Irish-medium schools because they have some particular needs — I have quoted the example of curriculum support before. As I said, the Minister is open-minded. If an argument can be put to him for why integrated schools have particular needs that would require ESA to deliver functions in a particular way, he would be willing to consider a similar duty. However, he wants to hear a reasoned argument for why there would be particular needs.
2617. **Mr Kinahan:** Given what we heard last week about the Treacy judgement, can we be sure that we will not find “it is the duty of” thrown back at us in 20 years’ time?
2618. **Mr Stewart:** There is always that possibility, Danny. It is a duty, and if there similar duties in relation to integrated education, the question for the Department and for ESA would be whether ESA was doing all that it would be reasonably expected to do to discharge that duty. It would be open to representatives of the sector or any other interested party to seek a judicial review to challenge what ESA was doing if they thought that that was not the case. Alternatively, a direct challenge could be made to the Department. One can never absolutely rule that out. However, in couching it in terms of being a “duty”, it would be the Department’s responsibility to ensure that ESA was aware of the implications of that and that it keeps what it does under review to ensure that it satisfies the requirements of the duty.
2619. **Mr Lunn:** I am looking at the four words “to promote shared education” in the proposed amendment. As far as I remember, the duties for the Irish-medium and integrated sectors do not use the word “promote”; they use the words “encourage” and “facilitate”. A couple of years ago, the Assembly agreed that it should try to promote integrated education, but that is not binding on the Minister.
2620. **Mr Stewart:** There is no duty to promote any form of education — integrated, Irish medium or otherwise. Trevor is right in saying that the two duties are to encourage and facilitate. If you are contemplating a duty to promote, the issue to be considered is that, by definition, promote involves giving one or other form of education precedence over others, which raises issues of parental preference.
2621. **Mr Lunn:** Yes, we discussed the meaning of “promote” a few weeks ago, and it is to raise above others.
2622. **The Chairperson:** A number of issues arise from that, all of which go back to the 1989 order that gave two sectors particular positions. Some would argue that their positions were privileged; others that it was a rebalancing or redefining of the Department’s actions or attitudes towards those sectors. If the 1989 order is to stay as it is and not be repealed, why is it necessary to have only one of the two sectors named in that order specifically named in an additional provision in the Bill? Clause 2(5), for example, mentions only the Irish-medium element; it makes no reference to the integrated sector. So is there any need for that to be there at all?
2623. **Mr Stewart:** One of the two existing duties is in the 1989 order, and the other is in the 1998 order, both of which remain in situ. Neither is being repealed. Clause 2(5) is not a restatement of the existing duty on the Department. It follows on from that and is a proposed duty on ESA to discharge functions in a particular way because, as I said, the Minister is satisfied that there is a particular need in Irish-medium education that requires that. He has not ruled out the possibility of a similar duty in relation to integrated education, but he remains to be convinced of the need for it. The two fundamental duties that apply to the Department remain as they are in current statute.
2624. **The Chairperson:** Why would the Department argue that there is a need for one and not the other?
2625. **Mr Stewart:** The argument is that the requirements of Irish-language

- teaching and learning differ. As I said, curriculum support is the example quoted most often to me. For teaching to be effective, I am told that it is not just a matter of translating into Irish the curriculum support materials that have been prepared in English. The differences between Irish and English are so profound that bespoke curriculum support materials must be prepared in the Irish language for teaching in Irish. There is not simply a read-across to any English-medium school. Of course, there could be in other areas, and the Deputy Chair mentioned transport. If an argument can be made about the transport needs of the integrated sector, the Minister is absolutely prepared to consider it.
2626. **Mr Lunn:** The transport needs of the Irish-medium sector?
2627. **Mr Stewart:** The Irish-medium sector, as we have seen from the Treacy judgement, clearly has particular transport needs. A similar argument could be made for the integrated sector because the catchment areas of integrated schools can be considerably larger than those of other types of schools.
2628. **Mr Lunn:** In last week's discussion, the point was made that the integrated sector already has some special transport arrangements.
2629. **Mr Stewart:** That would seem, then, to negate the argument for a clause similar to clause 2(5).
2630. **The Chairperson:** I want to ask you about clause 2(2)(c), which goes into the field of area planning, which is dealt with in clause 24. Clause 2 deals with the functions and general duty of ESA. Clause 2(2)(c) states that it is the duty of ESA:
- "to promote, and co-ordinate the planning of, the effective provision of schools, educational services and youth services".*
2631. Given that ESA is the owner of the controlled sector — we will come to the issue of sectoral bodies and sectoral support later on, which is, you could argue, predominantly about ownership — how can it carry out its functions under this proposal for the controlled sector in such a way that it is seen to be reflective and impartial and genuinely doing the job in the best interests of that sector?
2632. Over the past number of months, we have heard a number of criticisms of the current operations and practices of the boards. When it came to area planning, every organisation was involved in the area plan on the basis of owning their schools. They had their sectoral body there, but the controlled schools had board officers. The schools particularly affected, where board officers and the board have come up with a scheme that says that a school will change radically, close or whatever, are not convinced. Time and time again, we have heard that the boards have not represented their views. Clearly, that issue has to be addressed.
2633. **Mr Stewart:** There is an issue there, and a number of facets of the Bill are designed to deal with that. Whether they go far enough is a matter on which the Committee will want to form a view. Many times down the years, we have heard the argument put, in contrasting ways, that ESA's ownership of controlled schools would give those schools some sort of unfair advantage or some sort of unfair disadvantage. We have heard both arguments put fairly vociferously to the Committee.
2634. There are two aspects in the Bill that address that and one that is missing, which I will come back to. The most important of the two aspects is in clause 2(3), where there is a specific duty on ESA not to treat the schools that it owns any differently from any other schools.
2635. Alongside that, the changes to controlled schools are very important. Controlled schools today are those that are owned and managed by education and library boards. You are absolutely right, Chairperson, that, around the table today, board officers exercise two functions: first, as the

- education and library board, which is the education authority; and, secondly, as the representatives of the owners and managers of schools. That puts controlled schools in a difficult and, sometimes, invidious position.
2636. The changes in the Bill mean that controlled schools will be in a very different position. They will still be owned by ESA, but they will be managed by their board of governors. In every respect other than ownership, their relationship with ESA will be the same as that which maintained schools have. Those two elements — the statutory duty on ESA to be impartial and the fundamentally different relationship that it will have with controlled schools — will place the controlled sector and controlled schools in a different position and so deal with the issues of concern raised.
2637. What is not in the Bill — you will not remember it with any fondness, Chairperson — is the proposal made in the previous mandate for a holding body for controlled schools. That dealt with the residual issue of ownership and would have separated the ownership of controlled schools from ESA. That did not find favour with anyone, which is why it is not reflected in the Bill.
2638. **The Chairperson:** Let us work that out in practice. An area plan is being proposed and promoted by ESA, and there is a duty on ESA to consult. ESA decides that it will consult area A, in which there are two controlled schools, two maintained schools and one integrated school. Who will be at the table? Will the board of governors of the two controlled schools and ESA represent the controlled sector?
2639. **Mr Stewart:** I suspect that all those parties will be there and that the areas for area planning will be considerably bigger than that. ESA will be there as the statutory planning authority holding the ring, as it were. The controlled sector body, or representatives of it, would, of course, be there. Looking at the duties and powers in clause 28, we expect all those listed to be involved in the area planning process.
2640. **The Chairperson:** School A is a controlled school and decides that its view on the area plan needs to be brought to attention. So does ESA make a comment at the meeting, or must it say that it is impartial and so cannot comment? Ultimately, the responsibility for the area plan lies with ESA.
2641. **Mr Stewart:** I think that there is a difference between being impartial and being silent. It will be ESA's job as the owner of the controlled schools, as the body that will establish new controlled schools, or as the body that will bring forward development proposals to close controlled schools if that were thought necessary, to give a view on what ESA thinks is required, not just in the controlled sector but in all sectors.
2642. One would expect boards of governors and the other parties named in the clause to give their views as well, and, of particular importance, is the view of the sectoral body. At the end of that process, ESA has to assimilate all the views put forward in the area planning process into a cogent and coherent area plan that deals with the requirements for schooling in all sectors, including, as tends to be overlooked sometimes, youth services and early years services. ESA will put the plan to the Minister for a decision. Ultimately, the Minister will sign off on an area plan, and there will then be an individual development proposal to give effect to it.
2643. **Mr Kinahan:** Does that mean listing every single type of body that should be consulted to ensure that they are all consulted?
2644. **Mr Stewart:** We believe that we have done that. Clause 28 is not short. We have tried to identify all those whom we think ought to have a role in consultation and involvement in area planning, for reasons that were discussed earlier in relation to the Youth Forum's evidence. It is not practical to have an absolute duty to involve everyone who might wish to be involved, but placing that

as a power rather than a duty gives ESA flexibility in how it will secure the meaningful involvement of all the sectors and interests named therein. It is the intention of the clause to be comprehensive, so, if we have left out some part of the educational landscape, I am sure that the Minister will want to consider that.

2645. **Mr Rogers:** On the same point of consultation on the area plan, sectoral bodies are mentioned. What about groups not currently represented by a sectoral body?
2646. **Mr Stewart:** There is a catch-all at the end of the clause, which I think that the Chair pointed out earlier, so if we have left anybody off a specific list, there is a power there for ESA to consult and involve them if it wishes. The intention is not to exclude any interest from the area planning process. It is meant to be inclusive.
2647. **Mr Rogers:** Will ESA set that in motion?
2648. **Mr Stewart:** Yes. ESA will be the area planning authority.
2649. **Mr Rogers:** If the Irish-medium sector felt that it was not being represented, how would it engage?
2650. **Mr Stewart:** It will be represented. There is a duty to have the Irish-medium sector represented because the duty extends to sectoral bodies. Comhairle na Gaelscolaíochta (CnaG) will be the sectoral body for the Irish-medium sector, so there will be a duty to involve it in the area-planning process.
2651. **The Chairperson:** How do we square the circle of clause 2(3)? I want to stay focused on the clause that we are dealing with. You have referred to it. It states:
- “In exercising its duty under subsection (2) in relation to schools, ESA shall ensure that schools whose premises are not vested in ESA are treated on the same basis as schools whose premises are vested in ESA.”*
2652. That is in complete contradiction to clause 2(5), where, because of previous orders — 1989 and 1986 — a duty is

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

2653. **Mr Stewart:** I try not to disagree with High Court judges.
2654. **The Chairperson:** So do I. Treacy was very clear that there is a practical significance. That was his phrase. How would a court judge decide whether the 1989 and 1986 orders or ESA was more predominant or important?
2655. **Mr Stewart:** There are two points. Fair and equal treatment does not mean identical treatment; that is an important principle that runs through law. Treacy's judgement pointed out — I am paraphrasing the judge's words — that the duties give the Department some discretion about the treatment of those sectors that it does not have for some other sectors. That gives us, and will give ESA, the legislative basis to do certain things to encourage and facilitate those forms of education that we are not required or even authorised to do for other sectors. To answer your question at its simplest: those duties in articles 64 and 89 of the 1998 order cannot be ignored. They are not aspirational; they must be given effect by the Department and by ESA. However,

- to address the very specific concern put by some stakeholders, most usually that controlled schools would somehow be given preferential treatment simply because they were owned by ESA, we have, we hope, nailed with clause 2(3). That is specifically prohibited.
2656. There may be those who wish to describe the treatment that will be given to Irish-medium and integrated education as “preferential”. I will not use that word myself. However, to whatever extent the treatment of those two sectors differs from the treatment of other sectors, it is in pursuit of those statutory duties, which the judge made very clear to us are to be regarded as something more than aspirational: they have to be concrete.
2657. **The Chairperson:** I want to raise an issue about the concerns that were raised by the TRC. In the summary of its submission to us, it stated that it welcomed the approach to education gained and the duty:
- “to contribute towards the spiritual, moral, cultural, social, intellectual and physical development of children and young persons”.*
2658. Regarding the spiritual development of children and young people, the transferors argue that the statutory provision of religious education is recognised by an appropriate level of curriculum support within the services of ESA or possibly delivered through a function of the sectoral support body. You are aware, Chris, that considerable concern has been raised about how we continue to ensure that RE is set out in the orders, which are not changing. Given the demise of the boards, education officers have all disappeared. You now have a situation whereby some would argue —rightly so — that the provision of religious education, which is a duty of the Department, has fallen far short of what it should be. Yet we are again boosting one element of the sector while another element, for which the Department has a duty to carry out its functions when it comes to religious education, is in some cases withering on the vine. We need to address that issue.
2659. **Mr Stewart:** That is absolutely right. It is recognised and accepted that the curriculum support service that boards can currently provide, not only in RE but across the curriculum, falls far short of what colleagues in the boards would wish to be providing and what we would wish them to be providing. That is not due to any misdeed on their part: it is because a significant number of posts have been taken out of education and library boards in recent years in preparation for ESA. It is not the fault of anyone on the education and library boards that we are not yet in a position to establish ESA. However, when it comes to the senior management of those sorts of services, we have enough staff in place to run one organisation, but they are spread over five organisations. At the delivery end of curriculum support, there has been rigorous vacancy control in the past few years in preparation for ESA to take out the posts and provide the savings that are outlined in the business case.
2660. It is a sad fact that many officials will come in front of this Committee and others and explain why we have not made the savings that were predicted for some policy or other. This one is rather different. The savings have already been made, the money has already been taken out of the education budget, the posts have already been taken out of education and library boards, and we are waiting for ESA to come along and cast the remaining resources in a very different structure.
2661. Our concern about the transferors’ specific proposal is of a more practical nature and relates to the nature of primary legislation. The transferors are inviting the Minister to specify in primary legislation the outcome of an operational decision that ESA might make in configuring that curriculum support service. The question we would pose is: why stop at RE? Should we specify the curriculum support for geography, history, the important STEM subjects and modern languages. I do not argue for one moment that they are more or less important than RE, but it

- would be very unusual for any legislature to try to specify in primary legislation the outcome of one strand of an operational decision by ESA. Why bother with ESA, which is a large organisation that will cost a certain amount of public money to run, if we are going to ask the Assembly to do its work for it and makes those operational decisions?
2662. **The Chairperson:** I am trying to remember which order places a duty on the Department to provide religious education. You say that that duty is there but that because of an operational malfunction — the running down of the boards at the behest of the Department because of the introduction of a vacancy control policy in 2006 to bring ESA into existence, which is a cynical view but is probably how it is — you have to allow the service to wither on the vine until you get the organisation established in the hope that ESA will ensure that its duty is carried out for the curriculum service. You may know the reference that I am trying to find in my head, but it specifically mentions religious education. It does not mention STEM subjects or any other curriculum provisions.
2663. **Mr Stewart:** There are duties around the provision of RE, but the transferors' concern is that what is missing is not the provision of RE but the curriculum support from the board to give it back-up. RE teachers are struggling to do their best to deliver the subject without what they would regard as sufficient curriculum support back-up from the education and library boards. You summed up the reason for that absolutely correctly: the service has withered on the vine. When vacancy control was introduced in 2006, no one would have expected that here we would be, in 2013, still not having reached the point at which we had established ESA. The vacancy control policy was not designed to run for six or seven years; it was designed to run for a period of months.
2664. **Mr Kinahan:** Have we moved off clause 2(2)(a)?
2665. **The Chairperson:** No. We are still on clause 2, so anything relating to clause 2 is relevant.
2666. **Mr Stewart:** That is why I raised an eyebrow when I heard that you had an ambition to reach clause 28 today; I thought that a little ambitious.
2667. **The Chairperson:** We are doing all right.
2668. **Mr Kinahan:** Can I take you back to clause 2(2)(a)? An amendment has been proposed to promote shared education. Trevor talked about “encourage and facilitate” as a better wording than “promote”. Maybe we should put that in as a separate amendment. Is that what we are looking for?
2669. **The Chairperson:** It is up to members to express whether they feel that that is what we should be doing. The proposed amendment is to require ESA to “promote” shared education, whereas in other orders, the words used are “facilitate and encourage”.
2670. **Mr Stewart:** Chair, if I may: I note that the words in the proposed amendment are “shared education”. The obvious technical point is that there is no definition of shared education.
2671. **Mr Kinahan:** Does “encourage and facilitate” read better?
2672. **Mr Stewart:** Our advice is that “encourage and facilitate” is preferable to “promote”. However, if the reference is to “shared education”, the first question that the draftsman will ask me is: “What is the definition of shared education?” As you know, Chair, the Minister awaits the advice of the advisory group on advancing shared education. That may or may not include proposals for legislation, so I think that the Minister's view on that proposed amendment is that it is premature and that there are some technical deficiencies. He would wish to await the advice of the advisory group on advancing shared education. As he said, he wants to promote a debate across civic society on how best to do that. The conclusion from that may be that some legislative change is required. However,

- at this stage, the Minister would regard it as premature.
2673. **Mr Lunn:** I completely agree with that. Shared education would be very difficult to define, so that issue is down the road somewhere. The duty to promote the spiritual development of children was, if I remember correctly, well fought over previously, and it was agreed to put it in even though some people thought that that duty was incumbent on Churches rather than schools. If there is to be a requirement on ESA to promote the spiritual development of children, it is hard to see how that does not lead to a level of curricular support, which I think is the comment from the transferors.
2674. **The Chairperson:** In a sense, one logically follows on from the other.
2675. **Mr Lunn:** I do not see how you can have one without the other.
2676. **The Chairperson:** Is there a timetable for the response from the advisory group on the advancement of shared education?
2677. **Mr Stewart:** The Minister has agreed to a slight extension. The original timetable would have meant that the report would have been with us now, but the group has asked for a few more weeks. We are expecting a report by the end of this month.
2678. **The Chairperson:** Between now and final proposals being made, the issue could be looked at again.
2679. **Mr Stewart:** It could. As I say, we have no idea at present what might be in the report. It is an entirely independent group, like the review of the common funding scheme. So we do not know what approach the group will take to a recommended definition of shared education or to how the advancement of shared education might be brought about.
2680. **The Chairperson:** Are there any other points that members want to make on clause 2?
2681. **Miss M McIlveen:** May I make a general comment on the clause-by-clause summary? We have received quite a number of written submissions. In fact, we have had 40 written submissions and 15 oral evidence sessions. I know that the proposed amendments are in one column, but those are not attributed to any organisation, and that is slightly confusing when it comes to making a comment.
2682. **The Chairperson:** That is why members should make sure that they bring the summary of written submissions with them, as that attributes the proposed amendments and comments.
2683. **Miss M McIlveen:** It might be useful to have that in this format as well.
2684. **The Committee Clerk:** I can change the format of next week's paper so that it states where the proposed amendments come from. What the Committee is assessing now is the merit of a proposed amendment, such as it is, not really who proposed it. However, if members want that, I will certainly provide it.
2685. **Miss M McIlveen:** It would be useful for reference purposes.
2686. **The Chairperson:** That is why I am referring to the summary of written submissions. It gives me all the comments, a list of the organisations that have given submissions to us and a summary of their views on each clause, which is useful. I know that you end up looking at three or four different pieces of paper at the same time, and multitasking is probably a bit of a challenge for the male population.
2687. **Mr Kinahan:** Speak for yourself.
2688. **Miss M McIlveen:** It might be helpful if those could be merged.
2689. **Mr Kinahan:** May I come in on another point? Sorry; I have forgotten what I was going to say. Carry on and come back to me.
2690. **Mr Rogers:** I think that that is a very useful suggestion because there are so many bits of paper, and we really need to get all the comments on the same page.

2691. Chris, you said that fair and equal treatment does not mean identical treatment. Will you elaborate on that?
2692. **Mr Stewart:** One of the strands of my background is health economics, and the definition that a health economist would give for equity or equality is equal access for equal need. So it is not identical provision. It is provision that is equal in the sense that need has been assessed and adequate provision has been made to meet that need.
2693. There are, for example, particular needs in Irish-medium education that simply do not exist in English-medium schools. Therefore, identical provision is neither necessary nor, indeed, feasible. However, that does not mean that recognising the particular needs of Irish-medium education is unfair, because those are unique needs.
2694. **Mr Rogers:** Thank you. That was helpful.
2695. **Mr Stewart:** The analogy one might draw in education generally is that special education is not unfair. It just recognises the needs of certain children.
2696. **Mr Kinahan:** Last week, we delayed things because we did not have the amendments from the Department. Do we know that those amendments will not affect these early clauses?
2697. **Mr Stewart:** The Minister has not yet come to a view on particular amendments that he wishes to propose. He is aware of the Committee's desire to see the Department's amendments as soon as possible, but he is not yet in a position to put anything specific to the Committee.
2698. **The Chairperson:** Therein lies the problem. When we get to clause 3 in a few minutes, there will be another problem, because we have not seen the Department's proposals or amendments for that.
2699. **Mr Stewart:** At this stage, I should point out that clause 2 is one of the easier clauses. On the Deputy Chair's question, I should say that the Minister has indicated that he has an open mind and is prepared to consider amendments to clause 2.
2700. **The Chairperson:** I have an issue, and this goes back to Sean's point about treatment and so on. Clause 2(3) states:
"are treated on the same basis".
2701. I do not see how ESA will be seen to treat them on the same basis when there is a legislative requirement in the 1989 and 1986 orders to promote and facilitate two other sectors? It cannot treat them on the same basis because there is this duty. I just cannot get my head round that one, and I have a real problem with it. I would have no difficulty with subsection (3) if we repealed the other provisions and put everybody on a level playing field. It would then be on the basis of need, but I know that that is not the Minister's view.
2702. **Mr Stewart:** You have answered the question.
2703. **The Chairperson:** It is my view and that of my party that there is an uneven playing field, which is, unfortunately, not being addressed adequately in that clause.
2704. **Mr Lunn:** The reason why integrated and Irish-medium education received that "special" treatment, as you call it, is, frankly, because it is the only way in which they could ever have been established in the first place. A new school in integrated or Irish-medium terms could mean a dozen pupils. That is based on parental choice, parental demand and parental need — whatever you like. It is people's desire to see their children being educated with pupils from other religious backgrounds. Frankly, however, that is where it stops. When the children get into the schools, education provision is very much — in fact, absolutely — the same as that which they would receive in a controlled or maintained school. Forty years ago, it was laid down that there had to be a special provision to enable the establishment of those schools. In the case of Irish-medium education, it goes slightly further than that because there is an obvious need for different

- curricular tools and equipment. That is the difference. It is an ongoing argument that we will probably still be raking over in 20 years' time. That is my understanding.
2705. **The Chairperson:** Judge Treacy did not say that with regard to practical significance and duty.
2706. **Mr Lunn:** Judge Treacy referred only to transportation. He identified a further point in the entire spectrum of education in which there is a particular need for those types of schools because of their larger catchment areas. I do not see any contradiction in that. That is facilitation. You cannot facilitate the operation of an integrated or Irish-medium school that draws its pupils from, perhaps, a 20-mile circular catchment area — the case that we were talking about was from Downpatrick to Belfast — without having special transport arrangements. It is not to the detriment of other schools. There is nothing to fear here.
2707. **Mr Rogers:** Parental choice is vital and is the basis of our education system. Certainly, it is my firm belief that faith schools, integrated schools and Irish-medium schools should have the same rights in legislation.
2708. **Mr Kinahan:** I think that we should take legal advice as to how those clauses should be written so that there is a level playing field. I take the point. I can see that we are moving one person miles to study the Irish language, yet we might not move 200 people on four buses because that duty is not imposed.
2709. **The Chairperson:** You could end up in that situation, and we will. For this comment, we will move outside of clause 2.
2710. **Mr Kinahan:** It is all the way through the Bill.
2711. **The Chairperson:** Primary schools' consultation is coming in the next number of weeks. There is no doubt about that. It is coming down the road. There will be proposals to close schools. One of the biggest issues will be how to transport children from rural primary schools that it has been proposed to close and bring them into a hub. If there is no duty on the Department to facilitate and promote in the sectors that are not specified, it is up to parents, under current legislation, to get their child from A to B. There could be two other sectors for which, because of the current legal position, the Department or ESA will have a duty to promote and facilitate. There will be a continuation of special or — perhaps “special” is not the word — different arrangements that, in the eyes of the other sectors, is totally and absolutely unfair. I am not picking out the two sectors because I have any issue with the fact that they exist: I would say the same about whichever sector it was. That is the dilemma. I accept what you are saying, Chris, in trying to explain it to us. However, I do not accept the rationale on which it is based.
2712. **Mr Stewart:** I recognise that, Chair. Of course, it is entirely for the Committee to decide which amendments it wishes to propose or into which areas of policy it wishes to delve. The Department's starting point has to be the policy memorandum agreed by the Executive. No part of the policy memorandum asked us to look at the existing duties to encourage and facilitate. So it was not a question of our looking at the issue and deciding not to do it: it was simply not on the policy agenda that was set for us by the Executive.
2713. **The Chairperson:** Therein lies the problem and our practical difficulty. A decision on any clause has to be read against existing provisions, which will have a practical outworking when it comes to the establishment of the body that we are discussing.
2714. **Mr Stewart:** You are absolutely right, Chair. You are reading my own words back to me, and I cannot complain.
2715. **The Chairperson:** The Executive may not have told you to do it. However, that is how it will end up. I could nearly sit in your seat, Chris. No — I am not going to go there.

2716. **Mr Stewart:** I would not wish that on you.

2717. **The Chairperson:** Let us go back to the proposed amendments. There is a proposed amendment to require ESA to promote shared education. Clearly, we do not know what the Department intends or may intend to do so we cannot come to a view one way or the other. Is that a fair comment?

Members indicated assent.

2718. **The Chairperson:** There is a suggestion in the clause-by-clause summary about removing the reference to spiritual development, with which I do not agree. The reference to spiritual should remain as it is. Do members agree?

Members indicated assent.

2719. **The Chairperson:** So we are rejecting that proposed amendment.

2720. There is a proposed amendment to require a level of curricular support to contribute to the spiritual development of children. That has been explained. Was that a specific amendment from the TRC?

2721. **The Committee Clerk:** Yes, it was. The TRC also refers to RE inspections, as members will probably recall.

2722. **The Chairperson:** Chris says that that is more a result of issues around the curriculum advisory and support service (CASS) than a result of the duty.

2723. **Mr Stewart:** Yes, very much so. It is about practicality. The Minister does not feel that it is appropriate to try to specify in primary legislation the outcome of operational decisions that he is paying ESA to make. There is also a clash with another aspect of policy, which has been touched on by a number of stakeholders who have given evidence. Those stakeholders have said that they very much, in the interests of school autonomy, want to move beyond the traditional model of CASS providing services. The criticism that has been made, rightly or wrongly, is that it has been a one-size-fits-all approach. CASS provides a particular type and level of service. It is good if it happens to meet the needs of schools, but if it does not,

that leaves schools somewhat bereft of support. The Minister's policy is for a "mixed market" — I use the term advisedly — provision of curriculum support, with ESA providing some services, and schools or groups of schools providing other services or commissioning or procuring them. So the proposed TRC amendment clashes — indeed, runs against — the proposal for a mixed economy or a mixed market of curriculum support service.

2724. **The Chairperson:** Can we park that because I want to provide members with the orders that refer specifically to how RE is provided for in schools? That is a very important issue. We will park that and have no view one way or the other on that proposed amendment.

2725. There is a proposed amendment that linguistic development be added. Am I right in saying that that came from CnaG?

2726. **The Committee Clerk:** That is correct.

2727. **The Chairperson:** CnaG said that a reference to Irish-medium education should be included that would reflect the Department of Education's duty under the Belfast Agreement and the 1998 order, which places a duty on the Department to facilitate the development of Irish-medium education. CnaG wants linguistic development to be included. Obviously, my party does not feel that it is necessary to do that, given that we have raised issues about clause 2(3) and the level playing field.

2728. **Mr Lunn:** If it came from CnaG, and it thought that, for some reason, putting in the word "linguistic" somehow reinforces the need to promote the Irish medium, that is ridiculous. However, it might be a slightly different thing if it came from someone else who thought that it might be necessary to put in the word just to make the point that there are quite a lot of pupils now in schools who do not have English as their first language, that is, immigrants.

2729. I heard the Department's comment that "intellectual development" would include the term "linguistic". I must say that I am not totally convinced by that. I am

- sure that, as it rightly points out, quite a lot of items could be listed under “intellectual”, and “linguistic” might be one of the more valid.
2730. **Mr Stewart:** It could. The Department’s concern about this is purely practical. Linguistic development is clearly a very good thing; it is part of the curriculum. We feel that it is also part of intellectual development. If one were to list every dimension of intellectual development under clause 2, the clause would be very long indeed.
2731. **Mr Lunn:** We had a discussion in the past about the need to develop, apart from just straightforward learning, social and presentational skills, as well as the use of language in the promotion of yourself at interviews and so forth. Is that development of linguistic skills perhaps that part of the equation? Could that perhaps involve the use of language, rather than learning a language?
2732. **The Chairperson:** Would that not come under “social”?
2733. **Mr Lunn:** I am just speculating.
2734. **The Chairperson:** Do you remember that in the previous Bill we had the whole issue about whether we should include the term “mental”. I hope that I am right in that. Chris, you can keep me right. Am I right?
2735. **Mr Stewart:** I recall it well, sir.
2736. **The Chairperson:** How long did we agonise over that? As it ended up, it did not come into this draft.
2737. **Mr Stewart:** Many valid arguments could be made for the inclusion or omission of particular words in that clause. Our intention, certainly, was to have a comprehensive definition of what education is for, recognising that it should take a whole-child approach and contribute to every aspect of development that a child or young person will need to take his place as a citizen in society. It is our honest belief that the words that we have used achieve that. However, arguments could of course be made for other words. Many arguments could be made for many words, and clause 2 could end up being very long indeed.
2738. **The Chairperson:** Is there not an issue here? Take the words “mental” and “linguistic” as examples. Not that we would ever aspire to be in the legal profession, but does it not all come down to an argument about what is efficient and effective? Whether it falls into the area of the terms “mental” or “linguistics” or whatever, you could argue that the issue is about whether the services that are being provided efficient and effective. The onus is on whoever feels that they have been short-changed or are not getting the service that they think is adequate to argue, however, that you have a duty under clause 2(2)(a) to ensure that there is efficient and effective primary and secondary education and that educational services are available to meet the needs of such children. Surely that would give you a pretty broad parameter to work under.
2739. I am just trying to see whether we should adopt or reject the amendment, and I do not see that there is a consensus for adopting it.
2740. **Mr Lunn:** Leave it the way it is.
2741. **The Chairperson:** Leave it the way it is?
2742. **Mr Rogers:** Is the word “linguistic” not there because it reflects the 1998 order, which puts a duty on the Department to facilitate the development of Irish-medium education?
2743. **The Chairperson:** That was the argument that was being made.
2744. **Mr Stewart:** The suggestion did, indeed, come from CnaG.
2745. **The Chairperson:** Yes. That is right.
2746. **Mr Lunn:** Is it not unnecessary?
2747. **The Chairperson:** Would the Department argue, Chris, that that is not necessary?
2748. **Mr Stewart:** Indeed, Chair. I do not think that anyone is arguing that linguistic

development is anything other than a very good thing.

2749. **The Chairperson:** So, will we just leave the clause as it is?
2750. **Mr Rogers:** Could we get a bit of advice on that, particularly as the 1998 order puts a duty on the Department? This is just a grey area for me.
2751. **The Chairperson:** It goes back to the point that Danny made earlier. I thought that we had agreed. Are you asking for legal advice on how the duty in the 1989 and 1986 orders sits with it?
2752. **We can include that. Is that OK?**
2753. **The Committee Clerk:** We have already asked Legal Services to provide a summary of the Department's obligations on Irish-medium education, so we are looking for additional legal advice on what you just said, which is how clause 2(3) sits with some of the other existing orders.
2754. **Mr Stewart:** If I may make an observation on that point. If the argument is, as we heard is the case, that the suggested inclusion of the word "linguistic" should stem directly from the duty to encourage and facilitate, the word "linguistic" would seem to me to cover a much broader range of abilities than the duty that is specifically on Irish-medium education, which I have observed is rather broader.
2755. **The Chairperson:** So, we have not decided. Are members happy enough to leave that one for the meantime until the legal view comes back?

Members indicated assent.

2756. **The Chairperson:** We will now deal with clause 2(2)(e), which indicates that ESA will advise the Department on matters relating to schools, educational services and youth services. Stakeholders sought clarity on the nature and status of that advice. Clause 2(2)(e) states that ESA will:

"advise the Department on such matters relating to schools, educational services and

youth services as the Department may refer to ESA or as ESA may think fit."

2757. **Mr Stewart:** I have to say that I was somewhat perplexed by that comment when I saw it. Stakeholders are asking us to predict the advice that we might need in the future. I do not think that that is feasible. This is a very standard approach in legislation to an advice-giving power. One simply does not specify in advance what the advice might be about.
2758. As to what the effect of the advice would be, it is just that: it is advice to the Minister of the day, and the Minister of the day can decide to accept it or not accept it.
2759. **Mr Lunn:** Who came up with that comment?
2760. **The Chairperson:** Was it the Northern Ireland Commissioner for Children and Young People (NICCY)?
2761. **Mr Stewart:** The legislation that established the office of the Children's Commissioner. I recall that from a past life, because I worked on it. There are similar powers in that legislation for the commissioner to give advice, but we did not specify in the legislation what he or she might give advice on.
2762. **The Chairperson:** Clause 2(2)(e) states the requirement for ESA to:
- "advise the Department on such matters relating to schools, educational services and youth services as the Department may refer to ESA or as ESA may think fit."*
2763. The commissioner recommends clarification on what, if any, onus will be on the Department to take account of advice that ESA submits to it. She asks what the nature of the advice that it is anticipated that ESA will provide will be and whether there will be a formal mechanism for the provision of advice. The commissioner has been surprised by the lack of reference to integrated school sectors in the draft legislation and notes that a number of provisions in the Bill cover the specific duties and requirements that would aid or promote the development of Irish-

- speaking schools, units in schools, and, specifically, protect their viability. She states that the Committee may wish to consider how the Bill may be improved upon to show inclusivity and a recognition of those children, young people and parents who opt for integrated provision.
2764. **Mr Stewart:** I think that the latter half of that risks taking the Committee back to the discussion that you just had, but I am happy to expand on it if you wish.
2765. On the first part of the Commissioner's comments, the clause is the formal mechanism. One might ask ESA for advice on any given day, either formally or informally, so there might be an e-mail, a letter or even a phone call. However, if there is subject on which the Department wishes to formally commission advice, the permanent secretary or even the Minister would write to ESA and quote the clause and say that they are making a formal request for advice under section 2(2)(e), as one would hope it will be, in the Act.
2766. I have never seen an approach in legislation anywhere where one could be any more specific on how one would go about asking for advice.
2767. **The Chairperson:** I do not think that there is a strong view about not accepting that amendment.
2768. Can we now look at some of the other comments? I am trying to follow the paper that Peter produced. We appreciate very much all the work and effort that Peter and his staff have put in to bring this material to us, so we have to try to make sure that we cross-reference and follow it. It is a huge task to try to put all the information down on paper, and I appreciate all that they have done for us.
2769. **Mr Stewart:** For the record, the Department also appreciates the work that the secretariat has done in bringing all this material together and providing it to us. It is extremely helpful, and it has certainly made our job easier.
2770. **The Chairperson:** Thank you for that, Chris.
2771. Further comments refer to clause 2(5). We have jumped back and forward a wee bit, so we may have dealt with this. The clause deals with "encouraging and facilitating" Irish-medium education. One comment suggests a change to the Bill that would require ESA to also promote integrated education and faith-based education in line with parental choice. Another comment requires ESA to encourage and facilitate integrated education, while two further comments refer to equality in education and seek explicit assurances on that in the Bill. Yet another comment, which CnaG put forward as a drafting amendment, refers to Irish-medium education rather than to Irish-speaking schools, and another seeks to confine the promotion of Irish-medium education to Irish-speaking grant-aided schools.
2772. **Mr Stewart:** There are a range of suggestions there, some of which are diametrically opposed. I fear that we cannot avoid going back to some of the previous discussion. As we pointed out, the starting point is that the whole basis of education legislation is not, as we often say, founded on parental choice; it is founded on parental preference. All the references in the legislation reflect that. We do not think that it is practicable to list all the manifestations that parental preference might take. It is certainly not possible to have a duty to promote, let alone encourage and facilitate, all of them. Our starting point is the existing body of legislation — the existing policy — which says that two particular forms of education, Irish-medium and integrated, have specific duties attached to them that do not apply in similar form to other sectors. So, the clause has been drafted against that background.
2773. The point was made, specifically on shared education, that it is a bit premature at this stage to try to contemplate amendments that would give effect to a policy direction that the Minister has not yet set.

2774. The suggestion in clause 2(5) to remove the particular duty on Irish-medium education or to somehow limit it was, perhaps, based on a misunderstanding of the clause. It was somehow felt that it would require all schools to do particular things with Irish-medium education. That is not the case. The clause is very much focused on what ESA has to do for those particular schools. A school that is not involved in Irish-medium education would be completely unaffected by clause 2(5).
2775. **Mr Kinahan:** I suppose that it ought to be written a bit more clearly, which is why I raised that when I originally spoke on it. When I first read it, I thought that it was able to make any school do Irish.
2776. **Mr Stewart:** Absolutely not. That was never the intention, and that is not the effect of the provision.
2777. **Mr Stewart:** However, if the Committee wishes to suggest it as an amendment, I am sure that the Minister would consider it. *[Laughter.]*
2778. **The Chairperson:** Are there any other comments?
2779. **Mr Lunn:** I agree with the departmental response to the comment on encouragement and facilitation. Much as I would like to see references on every other page to the need to promote integrated education, it is already there, and, as Chris said, it is not practicable to list all the various sectors. I do not understand the next comment. I am not clear where it came from. It says that there should be a duty on ESA to maximise opportunities for integrating education. It does not actually say, “for maximising the integrated system”. It says, “for integrating education”. Yet the proposed amendment goes back to the usual suggestion to encourage and facilitate the development of education in integrated schools. It is not the same thing. I am not with that one at all.
2780. **Mr Stewart:** I think that intentions that do not fit terribly well are mixed in that suggested amendment. Given that this is major legislation, one can understand stakeholders suggesting to the Committee that all manner of good things be added to it. However, this is not a general education order; it is quite a specific education order to establish ESA and connected purposes. These may be good things or they may not; the Committee will have a view on that, as will the Minister. It is absolutely open to the Committee to suggest whatever it sees fit. Currently, however, many of these suggestions go far beyond the policy agenda that the Executive set for us.
2781. **Mr Lunn:** I would see more sense to it if there were a suggestion to include in the area-based planning section the sorts of words that are in that proposed amendment to clause 2(5) on integrating education.
2782. **The Chairperson:** That proposal came from the Integrated Education Fund (IEF).
2783. **Mr Lunn:** That’s me in the doghouse, then. *[Laughter.]*
2784. **Mr Stewart:** That is a word that is used frequently, usually in the context of meaning some form of shared education that is more than just formal integrated schools. In that sense, it is used frequently in everyday conversation. As with so many terms, it would have to be precisely defined to be used in legislation.
2785. **The Committee Clerk:** NICIE, IEF and others suggested quite a few amendments, including amendments to the clauses on area planning and their requirement to promote collaboration, shared education and, I think, integrated education. Certainly, there was quite a lot about shared education and collaboration.
2786. **Mr Lunn:** That is an area on which certain bodies may come back to us again. I do not see how it fits in this particular section.
2787. **The Chairperson:** Yes. Can I ask —
2788. **Mr Stewart:** Chair, I would hesitate to see the draftsman’s reaction if I asked him to include the word “collaboration”.
2789. **The Chairperson:** Can we all be there when you ask him?

2790. **Mr Stewart:** Only to witness my demise, Chair.
2791. **The Chairperson:** Just bring him here, and then we will ask him. [Laughter.] I accept what you say about the Bill's policy intent being to establish ESA. That means that it has to amend all other legislation that is related to the organisations that will be dismantled, that is, the boards and so on.
2792. **Mr Stewart:** OK.
2793. **The Chairperson:** However, if clause 2(5) were not there at all, the duty would not change. That goes back to the point on which we are seeking legal clarification. In my view, it would not change one iota the duty and legal requirements that are already in statute to promote and to facilitate. It and the amendments that we have received open up a hornets' nest of other sectors saying, rightly, "Hold on; there is somebody getting something more here than we are". As I often say, if the educational world is as Chris sometimes explains it, I wonder why we have so many problems. He can explain things in a simple way. However, we end up having those organisations not being able to accept or understand that that is not the intention. You say repeatedly that that is not the intention.
2794. I will go back to Judge Treacy. The Department said that it was aspirational, and the judge said, "No, I am sorry. It ain't just aspirational; it has practical significance". As parties, or certainly as a Committee, we do not want to get to where I think is not a good place, which is to take a view that, on the face of it, we accept what the Department says, then six months down the road, when ESA starts to implement it, we discover that clause 2(5) is how it operates. So, what would the import be of its not being there?
2795. **Mr Stewart:** You make a valid point. Although that clause was included before the Treacy judgement, one could say that that is the outworking of one aspect of the Treacy judgement. The judge has asked the Department to reflect on what it does to give effect to the statutory duty to encourage and facilitate Irish-medium education. If we are back in front of him again, and I hope that we are not, we may cite that clause in our defence. The Minister has said that he has an open mind on the inclusion of a similar clause on integrated education because there is a similar duty there.
2796. If we had brought that Bill before you, and, instead of clause 2(5), there had been a similar clause that referred to, say, controlled schools, I think that we would have found that very difficult to defend. Members might well ask us why we had picked out controlled schools and given them what some might describe as preferential treatment, and they would have asked us to explain our rationale for doing that.
2797. We could not point to any duty to encourage and facilitate controlled education. The reason why that particular clause can properly be included in the Bill is because we have that underlying duty to encourage and facilitate Irish-medium education.
2798. **The Chairperson:** There is no political consensus. I can say, from my party's point of view, that we do not agree with, nor did we endorse, encourage, facilitate or promote, the inclusion of that in the 1989 or 1986 orders. That was a deal done under the Belfast Agreement by others, and they will have to take responsibility for that.
2799. I am speaking now not as Chairperson but as a party member. We do not accept that you should then ring-fence and copper-fasten something that you do not believe should have been there in the first place. The purpose of the direction that we are going is to treat everyone fairly. My fundamental problem with this is that we are caught in that dilemma.
2800. **Mr Stewart:** I cannot comment on any of that.
2801. **The Chairperson:** I am not asking you to.
2802. **Mr Stewart:** I know that you are not asking me to.

2803. What would happen if the clause were not there? Let us go back to one of the aspects of the duty that we discussed, which was the requirement on ESA to ensure “efficient and effective” provision. One of the things that we would expect ESA to do, even in the absence of that duty, would be to provide effective curriculum support and other services to Irish-medium schools. So, in a sense, I agree with the point that you made. Even in the absence of this duty, these are things that we would expect a well-functioning ESA to do anyway. That has been given some strength by proposing to make it a duty in the Bill.
2804. **Mr Kinahan:** So, I assume that you are going to amend the Bill accordingly with what you were saying?
2805. **The Chairperson:** What?
2806. **Mr Kinahan:** I was just being facetious, but given what you just said, I assumed that you were going to try to amend the Bill.
2807. **The Chairperson:** I do not think that we will accept clause 2(5).
2808. **The Committee Clerk:** You are waiting on legal advice on clause 2(5), but there are also other proposals to consider.
2809. **The Chairperson:** Yes. We have to work our way through the other amendments. Perhaps we should just go through them, unless members have any other comments that they wish to make.
2810. We should remember that others suggested these amendments. We are just trying to ensure that, as a Committee, we have given them due regard and that we are doing what I believe is right and proper. We are going through them, because people want to ensure that we, as a Committee, listened to them but then ignored what they said. We put the proposals in the format that is in the papers so that no one can say that we did not consider their suggested amendments.
2811. If we have missed anything, we will be happy to go back to it. However, I do not think that Peter and his staff have missed anything in trying to encapsulate the amendments that have been brought to us to date in the submissions. That is why Peter sent them out to the Department, which has responded. Everyone can see what their amendment was, what the Department’s view was and, now that we are in this process, what the Committee’s views are.
2812. **Mr Lunn:** Just for clarity, because you slipped it in there, are you going to propose the removal of clause 2(5)?
2813. **The Chairperson:** My party does not support the inclusion of clause 2(5). That is a party view. We will reserve that position until we have seen the legal position and so on. I am saying now, in this informal clause-by-clause consideration that, in general, it has always been an issue for us and we are raising it.
2814. **Miss M McIlveen:** We are being consistent.
2815. **The Chairperson:** Yes.
2816. **Mr Hazzard:** That is not the view of the Committee.
2817. **The Chairperson:** No. I have been very clear; I cannot say that that is the view of the Committee. That is why I am asking for the Committee’s view. As a party member and as my party’s spokesperson on that issue, I have stated my party’s view. We have been consistent in that. We do not agree that the 1989 and 1996 orders should ever have been included, nor do we believe that you should copper-fasten it by putting this element into the Bill.
2818. **Mr Lunn:** I do not mean to get into any kind of political discussion, Chairman, but does that mean you are going to try to remove the requirement on the Department to encourage and facilitate Irish-medium education?
2819. **The Chairperson:** We have already tried that in that amendment.
2820. **Mr Lunn:** Are you serious?

2821. **The Chairperson:** Yes. Why would we not be serious?
2822. **Mr Lunn:** OK. I am just —
2823. **The Chairperson:** Trevor, you cannot have a situation where you have an organisation that is supposed to be fair to everybody and then build in particular advantages, or whatever we would call them. I am always reluctant to call it “special provision” or to use such phrases, because they are all emotive in their own right. We get criticised for defending the controlled sector, because other sectors say, “You are defending them over and above the grammars.” The grammars come and attack us, saying, “You are not defending us the way that you could.” So, it is very hard to get a level playing field. However, I just think there is an imbalance there that we have never agreed to historically, and we do not think that it should be copper-fastened.
2824. **Mr Lunn:** Are you intending to make an attempt to dismantle the Irish-medium sector and, presumably, the integrated sector?
2825. **The Chairperson:** No. It is not an attack on the Irish-medium sector or an attack on the integrated sector per se. It is saying that a legislative provision has been made that we do not think should ever have been made. Those who argued for it at the time knew what it was: a trade-off. Irish-medium education was given to one side to satisfy nationalists, and integrated education was given to the other side to satisfy elements of pressure that were brought to bear.
2826. **Mr Lunn:** Satisfy? I think you struggled for a word for who in the integrated sector that would have satisfied.
2827. **The Chairperson:** It would be unfair to put them into any category, in that sense.
2828. **Mr Lunn:** I think that Hansard will be interesting, Chairman.
2829. **Mr Rogers:** If I could maybe bring a wee bit of reality into the discussion. I am just conscious of asking whether we will have the legal opinion on this subject for next week.
2830. **The Committee Clerk:** I actually asked for it a week ago.
2831. **The Chairperson:** Yes, that is what I thought.
2832. **The Committee Clerk:** However, what we can do is park the issue. The idea of clause-by-clause scrutiny is that when you run into little problems such as this, you then park them and move on to other elements that do not touch the same subject. When you get the advisory information that you are looking for, you can then come back and the Committee can decide its position.
2833. **Mr Rogers:** It is difficult to move on, because some of these issues are fundamental. Whether it is about encouraging and facilitating faith-based schools, Irish-medium schools or integrated schools, that is crucial to the whole essence of the Bill. It is very difficult to leave a clause, move on and come back to it. I really think that we need the legal advice on where we are ASAP.
2834. **The Chairperson:** That is maybe why we are where we are, despite my ambition to get to clause 28. We got at least halfway. We did not get to the 8 but we got to the 2. We are doing all right. I was never very good with numbers at school; I think that that is evident.
2835. I am trying to find out exactly who proposed that amendment to clause 2. That takes into account Michelle’s point about a read-over, which would be an additional help.
2836. **The Committee Clerk:** I think that it came from the integrated sector.
2837. **The Chairperson:** I think that it probably was. The amendment refers to supporting parental choice. The departmental response states that ESA will be required to take account of parental preference, not choice. It then refers us to article 9 of the Education (Northern Ireland) Order 1997.

2838. I will go back to this point, but we need all the orders sitting piled up in front of us so that we can cross-reference every element of this. If you want to be facetious, that is because the devil is in the detail.
2839. **Mr Stewart:** Welcome to my world, Chairman.
2840. **Mr Rogers:** We need Chris here to interpret it for us.
2841. **The Chairperson:** The departmental response to the proposed amendment continues that it is neither necessary nor practicable to list every type of school that parents might prefer. It continues that there are duties to “encourage and facilitate” for integrated and Irish-medium education and that the Minister does not propose to introduce similar duties for other types of school.
2842. Chris, do you want to make any additional comment? Let us stay specifically with that proposed amendment to clause 2(5), which suggests that the Bill would require ESA to also promote integrated education and faith-based education in line with parental choice.
2843. **Mr Stewart:** I will choose my words carefully, because I fear that I may provoke a political discussion again. We all — me included — use the phrase “parental choice” from time to time. Education legislation does not refer to “parental choice” but to “parental preference”. That is not a mere semantic distinction, but recognises that it is not always possible to accede to parental choice.
2844. I will make a more practical point about the suggested amendment — this is where I am trying not to provoke a political discussion. There are two sectors that sit differently in education legislation, because there are specific duties attached to them. If we were to encourage and facilitate everything, we will encourage and facilitate nothing. The treatment of those two sectors in a particular way is the result of political decisions that have been taken. If there were to be a duty to encourage and facilitate every type of legislation, that duty would become largely meaningless.
2845. **The Chairperson:** Members, to help us — maybe you will agree with this — we have come to 1.00 pm and there are a number of amendments with which we have issues. We want to get legal opinion, and I suggest that we stop at clause 2 and start again with that clause next week.
2846. **The Committee Clerk:** Chair, I have to say that we have very little time left. We got only to clause 2 after two hours, and I absolutely recognise that there were very important issues that members needed to talk about. I think that this means additional meetings. Would the Committee agree that we will start at 9.30 am next week, run on to perhaps 2.00 pm and arrange to meet again the following day, Thursday, in the afternoon? I know that no members are meeting at that time. We could do that for a couple of weeks, as, for example, the Social Development Committee did for quite a period.
2847. **The Chairperson:** Yes. Members, I think that we have to do that —
2848. **Mr Kinahan:** I cannot do Thursday afternoons.
2849. **Mrs Dobson:** I cannot either. My diary is booked solid.
2850. **Miss M McIlveen:** Can we not do Tuesday mornings?
2851. **The Chairperson:** I can assure you that I clear my diary. I spend Thursdays, Fridays and Saturdays doing what is important in my constituency, because I am here Mondays, Tuesdays and Wednesdays. We have to seriously look at the timings. We either meet on additional days or on sitting days. That is a decision we have to make.
2852. **Mr Kinahan:** I cannot do Wednesday afternoons. We cannot just go straight through.
2853. **Ms Boyle:** The Public Accounts Committee (PAC) meets on Wednesday afternoons. We will get a pre-brief next

- week at 1.00pm, so I could not sit through to 2.00pm.
2854. **The Chairperson:** What about Tuesday mornings?
2855. **Mr Craig:** Chair, I suggest that we schedule additional time on sitting days. You pointed out that there are three members of the Policing Board here, and Thursdays are always taken up by Policing Board business for those members. So, you will immediately be down by three members. You are going to run into difficulties with the PAC and conflicting Committees. Probably sitting days would be best. As Peter well knows, that was done in the past by the Committee for Social Development. There is precedent there.
2856. **Mr Kinahan:** We also did it in the Committee for the Environment on planning.
2857. **Mr Rogers:** If we are talking about fair and equitable treatment, as the only member from my party, if the PAC is on, I cannot —
2858. **The Chairperson:** I accept that.
2859. **Mr Rogers:** I think that it would be very difficult for people to rearrange appointments for next Thursday. However, if it would be helpful, we could meet, say, the following Friday or whatever.
2860. **The Chairperson:** I am going to ask Peter, between now and Monday, to draw up a proposed schedule of additional meetings. That will include looking at Tuesdays, which are sitting days.
2861. **The Committee Clerk:** I think that the problem with Tuesdays is that members of this Committee are also members of the Committee for Agriculture and Rural Development. It would have to be Monday afternoon.
2862. **Miss M McIlveen:** What about Tuesday mornings?
2863. **Mr Hazzard:** We could meet on Tuesday mornings between 9.00 am and 11.30 am.
2864. **The Chairperson:** What time does the Committee for Agriculture and Rural Development meet?
2865. **Mrs Dobson:** 1.30 pm.
2866. **The Committee Clerk:** There are other things that you do.
2867. **Mrs Dobson:** We have a group meeting as well.
2868. **The Chairperson:** But that is on Mondays.
2869. **Mrs Dobson:** On Tuesday.
2870. **Mr Hazzard:** What is on Tuesday?
2871. **The Committee Clerk:** The Committee for Agriculture and Rural Development. I thought that you —
2872. **Mr Hazzard:** It is in the afternoon.
2873. **Mr Kinahan:** So it is Monday afternoon then.
2874. **Mrs Dobson:** Are we not meeting from 1.00 pm next week, Chris?
2875. **The Chairperson:** I think Tuesday morning would be —
2876. **Mr Rogers:** We could miss our group meeting on Tuesday morning if you got the Monday.
2877. **The Chairperson:** We try to do all our business on a Monday morning and that leaves Tuesday for members to have other meetings.
2878. **The Committee Clerk:** Just to advise members that, if we do meet on Tuesday mornings and clash with plenary meetings, you will need to talk to your party Whips and make sure that it is OK. The Speaker has commented previously about Members not being present at Question Time. There is no Question Time in the morning, but I think that we should be aware of that.
2879. **The Chairperson:** I do not think that we can do that for next Tuesday morning, because obviously we will have commitments. However, I think that we will look at a schedule that will set out possible additional dates when we can meet. We will try to get that to you for

- Monday if not before. We need to look at a longer meeting next week and set out a schedule over the next few weeks.
2880. **Mr Kinahan:** Bite-sized.
2881. **Mr Lunn:** Are we on a fixed timescale? I know that, ideally, we pointed towards the end of April to finish these discussions, but —
2882. **The Committee Clerk:** We have to report by 8 April no matter what. We absolutely have to do that.
2883. **Mr Lunn:** Frankly, Chairman, there is virtually no prospect of that under the present system of trying to arrange days that suit everybody. Frankly, I think that we would need to get away from here for a couple of days and do nothing else. If we were to go somewhere on a Thursday teatime, do this for three or four hours, go to bed and do the same thing again on Friday all day, that would allow us to really try to break the back of this. If we could do that in the context of having got whatever legal advice we need and maybe become a wee bit less sceptical about some of the things that are written before us. I am looking at this issue of parental preference rather than parental choice. The comment just states that it is in article 9 of the Education (Northern Ireland) Order 1997. Do we not believe that? Why do we need to see it? I believe it, and if Chris says it is there, it is there. As we go through this, there will probably be other instances of where we might be calling for extra information or legal advice that we really do not need.
2884. **The Chairperson:** Point taken.
2885. **The Committee Clerk:** Just to summarise: we will meet next Wednesday and will make it a fairly long meeting. We will then probably meet the following Monday and Wednesday and continue with meetings on Mondays and Wednesdays for a bit.
2886. **The Chairperson:** No, Tuesday. *[Laughter.]*
2887. **The Committee Clerk:** Sorry, I do not know where I am. We will meet on Tuesday morning. I beg your pardon.
2888. Just to be clear on the informal clause-by-clause consideration: I am not sure whether we will have the legal advice for next week. The way this is arranged is that we should be able to push on to other matters. For example, I think that you could probably talk about the powers of the Education and Training Inspectorate or the clauses that refer to the Council for the Curriculum Examinations and Assessment, which do not really impact on the Irish-medium stuff. That approach really works. You identify something that you have a problem with and need information on and push on and deal with other things. I promise you that we will come back to it. When you get all those things surfaced, that will finish the informal clause-by-clause consideration and, honestly, the formal clause-by-clause scrutiny will be quite easy. Those are famous last words, I know.
2889. **Mr Craig:** Peter, are you going to get the amended tables that highlight who suggested what?
2890. **The Committee Clerk:** Yes.
2891. **Mr Craig:** I remember that was done in the Committee for Social Development. That was very useful. I have a good memory.
2892. **The Chairperson:** OK, members. We will park that there. Chris, thank you again.

27 February 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Mervyn Gregg *Department of Education*
 Mr Robbie McGreevy
 Mr Paul Price
 Mr Chris Stewart

2893. **The Chairperson:** We are very glad to welcome colleagues this morning. Safety in numbers, they say, Chris. Welcome back to the Committee, Paul. We have not seen you for a while. Robbie and Mervyn, thank you for coming. It would be only right and proper to place on record, because Committees are never done asking for more information on all sorts of things, the amount of work that has gone into the information provided to the Committee in the past number of weeks and months and also, I know, in trying to bring these two documents to us. It is appreciated. I ask Paul, Chris, or whoever, to speak to the documents, after which members will have questions.

2894. **Mr Paul Price (Department of Education):** I will just give a five-minute overview, if that is OK. You have received two documents since 14 February: guidance for schools on their schemes of management; and guidance for schools on their schemes of employment. Both were issued, for comment by 19 March, to the current employers of the school workforce and to other key educational stakeholders. The most important thing about both documents is that they are in draft

form. They are clearly marked as such, the preface indicates that, and they will remain in draft form until the Bill becomes law.

2895. I will point out some details about each in turn. The scheme of management guidance is generally issued for information purposes only. Even when it issues in guidance, when the Bill becomes law, it will be issued for information purposes only, generally. The Education Bill will place no new schemes of management requirements on schools, except for Irish-medium schools. It will consolidate existing requirements. There is no equivalent on schemes of management to, for instance, schedule 2 to the Bill, which provides such detailed provisions for schemes of employment. The relevant clauses of the Bill provide for the ownership and procedures of boards of governors, for the management and control of the school by the principal and board of governors and for the committees of boards of governors. They are fairly general.

2896. The guidance on the schemes of management explains that, in fact, schools shall not be required to prepare new schemes of management. Their existing scheme of management, which is already a requirement, will be deemed approved by the Education and Skills Authority (ESA) once it is operational. It will be for a school, if it feels that its existing scheme does not comply with the existing statutory requirements, to seek ESA approval. Otherwise, its scheme of management shall be approved. That document is issued for information. It is to assure schools of that very fact — that there is not too much to do on schemes of management — and to create context for the scheme of employment.

2897. The guidance on schemes of employment is quite different. It explains that the

- Education Bill will place a requirement on all schools to have in place schemes of employment approved by ESA, which is a new requirement. The guidance will formally communicate that requirement to schools when the Bill becomes law so that, then, it can be achieved by all schools and ESA before the day that ESA comes into being or as soon as possible thereafter. The importance of having in place employment schemes approved by ESA is so that there is clarity on the arrangements governing employment matters in all schools when ESA takes up its business. I will clarify what ESA approval of employment schemes consists of: it must follow where schemes fulfil the statutory requirements as set out in schedule 2 to the Education Bill and other education law.
2898. Perhaps the most important thing about the guidance on employment schemes is the way in which it illustrates how the employment provisions in the Bill will deliver on the single employing authority role for ESA and autonomy for schools in matters of employment. I refer members to specific points of the document: page 3, paragraph 6 of the main guidance, and page 46, paragraph 15 of the model employment scheme. These demonstrate the important device of the specified post, which will enable schemes, as their submitting authorities shall determine, to opt in to ESA support on appointments. The default, otherwise, will be board of governors' autonomy and responsibility on appointment matters.
2899. The support available from ESA is flexible. It can be nothing, as determined by a submitting authority and its scheme; it can be the provision of administrative support to a recruitment process, while the board of governors remains responsible; it can be professional support to an appointments panel of a board of governors, but in a non-voting capacity; or it can, for a post specified in an employment scheme, be full responsibility for a recruitment process. That is one of the key aspects of the employment scheme guidance to point out.
2900. Elsewhere, the guidance on employment schemes explains the roles of submitting authorities and the process that they shall go through in preparing and submitting a scheme to ESA; the process of ESA approval; and the role of and route to the tribunal that the Bill shall provide for in this area.
2901. My final comment about both documents is that the approach that we tried to take is that they shall be minimal; they shall reflect statutory requirements and no more; and that they are, if you like, as customisable and adaptable to individual schools as possible. That is all that I have to say.
2902. **The Chairperson:** You will be glad to know that I do not plan to say a lot either. Will you clarify one thing for me, Paul? The documents are being sent out to managing authorities for consideration — is that right? Who has now seen them?
2903. **Mr Price:** They have gone to all current employers of the school workforce and to key educational stakeholders.
2904. **The Chairperson:** Have the unions seen them?
2905. **Mr Price:** Yes.
2906. **The Chairperson:** We had a meeting with representatives from the Northern Ireland Public Service Alliance (NIPSA), the GMB and UNISON, representing the non-teaching staff, and we said that we would clarify whether they had received them. You are saying that the documents have been sent to them?
2907. **Mr Price:** Yes.
2908. **The Chairperson:** Have you received any response, collectively? Do you have any anecdotal evidence of issues raised?
2909. **Mr Price:** Not yet, no. The date of 14 February was probably just before half-term break for the schools, so we await their response.
2910. **Mr Kinahan:** Thank you very much. When we read through the Bill, we see that the schemes are subject to statutory requirements and guidelines.

- Have those all been written? Are there any that you are aware of that are still being worked on? That would concern me. Do we know all of the statutory requirements? Do we know all of the guidance that is coming through from the Department?
2911. **Mr Price:** The guidance and the model scheme of employment are written so as to deliver exactly on schedule 2 to the Education Bill. It is appended by guidance and a model scheme of appointment, which have been written so as to deliver on otherwise existing statutory requirements in employment, education and law. That is the approach.
2912. **Mr Kinahan:** Is nothing else looming?
2913. **Mr Price:** There should not be. There should be a comprehensive guide and model.
2914. **Mr Hazzard:** Page 19 of section 2 of the guidance on schemes of management for grant-aided schools refers to:
- “the power of the Department and other relevant authorities under regulations to remove a member ... of the Board of Governors”.*
2915. Will you outline which are those other authorities and the regulations under which they can remove a member?
2916. **Mr Chris Stewart (Department of Education):** Chair, with your permission, I will answer that. The regulations have not, in fact, been made yet. The power to do so is provided in article 23 of the Education and Libraries (Northern Ireland) Order 2003. A draft set of regulations is being worked on by Mervyn’s colleagues, but we are not yet ready to bring the regulations to the Committee. We will, of course, want to give the Committee early sight of those, even in draft form, before bringing them to the Department. In essence, the authorities other than the Department or, in due course, ESA that could remove governors are those that appoint them: for example, trustees.
2917. **Mr Kinahan:** That is why I asked the question. So there are some regulations yet to be written?
2918. **Mr Stewart:** There are some regulations in the pipeline. We think that they are important as a backstop, but we do not want members, still less governors, to feel that the Department is somehow planning to remove a vast swathe of school governors. That is absolutely not the case. As we have said before, the 14,000 school governors working in a voluntary capacity do a marvellous job. Our first resort, and ESA’s first resort, is to assist them and provide advice and support. However, as an absolute backstop, it is important that we have a statutory mechanism to remove a member of a board of governors in the very extreme situation in which that becomes necessary. We certainly do not envisage that power being used regularly.
2919. **Mr Kinahan:** Are those the only regulations that are behind?
2920. **Mr Stewart:** Yes.
2921. **Mrs Dobson:** Thank you for your briefing. Rather than seeking comments from stakeholders on the documents, would it not have been better for the Department to have involved them in the drafting from the beginning? Is there not a danger that drafting the guidelines without the input of educationalists may lead to more rather than fewer cases of loggerheads between the schools and ESA, with the associated cost of any independent tribunals falling on the taxpayer? Will you elaborate on that? What is the estimated cost of taking a scheme through an independent tribunal?
2922. **Mr Price:** First, it is important that we do this so that we fulfil the relevant parts of the Bill. Secondly, we thought that it was important to alert schools. Yes, we are issuing the documents for comment but, as far as the guidance on the scheme of employment is concerned, it alerts schools to a requirement that they shall face, perhaps with short notice, when the Bill becomes law. The best way to communicate that to schools was to provide them with an example of the requirement that they shall be obliged to produce, i.e. the model employment scheme. The key for us is

- how these documents are ultimately presented when they become statutory guidance. The point that I tried to make earlier was that they are minimal: they give schools the maximum possible room for customising and producing their own scheme. We can adapt their presentation, and that brief window for comment might elicit responses that push us towards showing in schemes what was a statutory requirement, what was a suggestion and what was a recommendation. In that case, we would issue the schemes and very successfully manage, I hope, the potential for any dispute between a school and ESA.
2923. I am afraid that I do not yet know the cost of a typical case going before the tribunal.
2924. **Mr Stewart:** It is too early to say. At this stage, we do not even know the composition of the tribunal, nor do we have any detail about its procedures. However, as that work is taken forward and firmed up by colleagues in the Office of the First Minister and deputy First Minister (OFMDFM), we will be happy to bring that back to the Committee.
2925. Adding to Paul's point on the schemes, I would say that this is a starting point, and we have to start somewhere. We do not see these documents as tablets of stone: they are guidance and models, and they will remain as guidance and models. However, we expect them to evolve over the years. As the sectoral bodies mature into their role, it would not surprise me if they began to come forward with model schemes for their particular type of school, and those schemes could be incorporated into future versions of the guidance that we produce.
2926. **Mrs Dobson:** You talked about the circumstances surrounding the board of governors, and paragraph 24 on page 10 of your paper states how they will be indemnified on matters relating to employment.
2927. **Mr Price:** The basic position is that boards of governors are indemnified where they remain within the provisions of their employment scheme. Their employment scheme is approved by ESA where they take decisions or proceed in matters according to their scheme, so the indemnification must extend to that point. I do not know whether you want to add any more detail to that, Robbie.
2928. **Mr Robbie McGreevy (Department of Education):** That is the intention. Provided that the scheme has been agreed by ESA and followed, whether for an appointment or an employment process, the board of governors would be indemnified.
2929. **Mr Price:** One of the benefits for a school is that it will not need to have an arrangement that covers its liabilities because ESA will provide that for them.
2930. **Mrs Dobson:** The Bill requires governors to "consider" advice from ESA when making a decision to dismiss a member of staff in that context. What exactly does consider mean?
2931. **Mr Price:** It means to have regard, to take on board, to have involved ESA in the processes. You will also see that, in some ways, schedule 2 provides for an ESA presence in matters of dismissal, so it should be a healthy state of affairs in any case.
2932. **Mrs Dobson:** Are you confident that boards of governors will fully understand what "consider" means?
2933. **Mr Price:** I am happy to look at the wording, but —
2934. **Mr Stewart:** I think that it would be the age-old test of reasonableness. ESA and the Department would look for evidence that a board of governors had given reasonable consideration to ESA's advice. If it was clear that it had done so and had thought about it, but nevertheless decided to disagree with that advice, it would have fulfilled the requirement to consider the advice. If, on the other hand, there was evidence that it had been dismissed without any proper consideration, or not considered at all, that clearly would not comply with the requirement. As Paul said, we can

- take a look at the wording if it is not clear, but our position at this stage is that we prefer not to go any further on tying that down in detail and specifying exactly what a board of governors needs to do.
2935. The thread running throughout all this is, as Paul outlined, to give as much autonomy and choice to boards of governors as possible, with certain backstops built into the schemes and guidance that simply reflect the requirements of law. We have not started out with a point of view that ESA should direct a board of governors on what it does in detail on any particular matter. We are trying hard to stay away from that.
2936. **Mrs Dobson:** For the sake of clarity on the principles: boards can disregard ESA's advice on the matter, make their own decisions and still remain indemnified against employment-related matters by ESA?
2937. **Mr Stewart:** Yes. Advice is advice; it is not a direction. Like guidance, it does not have the force of law. The requirement is to give reasonable consideration to advice, but that does not mean having to follow it slavishly.
2938. **Mr Lunn:** Thanks, gentlemen, for your presentation. On the same tack, about indemnity and liability, our notes state:
- "The Employment and Management Schemes must be compatible with each other; comply with legislation and must also be compatible with the Heads of Agreement".*
2939. The heads of agreement actually state that, when it is already the case, schools will continue to be their own employer and employ their own staff. Given the indemnity side of the issue, I think that Paul is saying that it is pretty clear that ESA will pick up the tab in almost any circumstances that you can envisage. How can ESA pick up the tab if a school is the employer of its own staff?
2940. **Mr Stewart:** It is important that the reference to the heads of agreement is in the guidance. It is central to the political agreement that underpins the Bill. However, it is our view that the arrangements in the Bill give effect to paragraph 10(c) of the heads of agreement. It will continue to be the case that all boards of governors that wish to — not just those that currently do it — will employ and dismiss their own staff. That is the case today for Catholic maintained schools. CCMS is the employer, but the boards of governors of Catholic maintained schools take the act of employing or dismissing teaching staff. It is our view that the arrangements in the Bill provide for that to continue.
2941. **Mr Lunn:** I am not arguing about that at all. I have always agreed with you, and the Bill is very clear, but the heads of agreement also seem to be quite clear, and they say something different. If I were a member of a board of governors of a voluntary grammar school, and assuming that all this goes through as it is now, I would not be convinced by the argument that ESA is the ultimate employer and that there is no need for that school to carry liability or professional indemnity cover. If I were giving them advice, I would tell them to keep themselves right because they still have to cover themselves.
2942. **Mr Stewart:** A school could choose to do that if it wished, but it is our view that those arrangements involve a risk transfer from schools, and others that are currently employers in their own right, to ESA. It is not a reason for proceeding in the way in which we are proceeding, but it is a consequence of the employment arrangements that are in the Bill, which we have to recognise and provide for.
2943. One of the first questions that we were asked about these employment arrangements way back when this all started was: who gets sued if something goes wrong? The advice that we received from our lawyer, who was in the Departmental Solicitor's Office (DSO) at the time and is now vice president of employment tribunals, was that that is really a question for a court or tribunal to decide. Commonly, any person or body that had a role in the action being

complained of is likely to be joined to the legal proceedings, and ultimately it is for a court or tribunal to decide who is responsible and to apportion the blame and the fine, if there is one. Therefore, it is possible, under these arrangements, for a tribunal to find that a board of governors has acted improperly and to apply some sanction or fine to the board of governors. However, the arrangements underpinning all that are that ESA, the Department, can pick up the tab because ESA is the employer, and we have the indemnification arrangements that are set in Paul's guidance. A board of governors could find itself in the firing line, as it were, early on, but it has the backstop of ESA and the indemnification arrangement to support it. However, if a board of governors feels that that is not enough and wants to use part of its budget share to take some additional cover, which we think is unnecessary, that is a decision for a board of governors.

2944. **Mr Lunn:** A board of governors will always be in the firing line because any claim against a school or a board of governors will not be because of the actions of ESA but because of the actions of a board, a school or a headmaster. I will put myself in the position of a judge to do it the other way round. If a judge were looking at a situation whereby the Act says that ESA shall be the employer of all staff, but he looks at the heads of agreement that clearly state that a school, when it is already the case, shall be the employer, why should he go beyond the school? We have been telling people — I am not quite sure whether the Department has been so specific — and the general feeling for quite some months now is that one of the benefits of this — particularly, let us face it, in a voluntary grammar school — is that they will not need to carry those types of cover. However, unless there is clarification, which we have been looking for for five weeks now from various Ministers and cannot get it, schools would be very ill advised to discontinue those sorts of cover.

2945. **Mr Stewart:** We would be happy to provide further clarification if it would be helpful. However, I think that it remains our view that there is a transfer of risk from boards of governors to ESA, and that could be legitimately reflected in the decisions that they make on insurance cover. We do not think that this sort of insurance cover is necessary.

2946. **Mr Price:** An ESA action is involved. ESA will have approved the scheme that a school has submitted, presumably maximising its autonomy in those employment matters, that puts it in the line of the case. Therefore, ESA will have a role.

2947. **Mr Lunn:** I am interested to hear, Chris, that you would be prepared, on behalf of the Department presumably, which effectively means on behalf of the Minister, to provide clarification because we cannot get that.

2948. **Mr Stewart:** I can certainly clarify the issue around insurance cover and the need for it or otherwise. If you are referring to potential amendments that might be brought forward to the relevant clauses, that is a different matter; the Minister will provide clarity on that in due course. To go back to your original point, Trevor: if a judge or a chair of a tribunal is faced with the question of who the employer is and who he or she should be looking at, he or she may look at the heads of agreement. That judge or chair will certainly look at the Act and at the modification order and the specific pieces of employment law that we mentioned last week, and there the matter will be put beyond doubt. When there is a reference in a relevant employment statute, we will modify that reference so that it is a reference to the board of governors. If an act is required to be taken or not taken under employment law by the employer, and it has not been taken, a board of governors will be held to account.

2949. The Committee has heard many times from a number of stakeholders, particularly those representing schools that are currently employers, that this is what they want. The old maxim of

- being careful what you ask for comes into play. They will get exactly that. It has always been our intention that they will be regarded under employment law as the employers and will be accountable under employment law for the employment decisions that they take. Under paragraph 10(c) of the heads of agreement, they will continue to employ and dismiss staff and will be accountable for doing so.
2950. **Mr Lunn:** Paragraph 10(c) states that they:
“will continue to employ and dismiss”
2951. their own staff. That is not quite the same as saying that they will continue to be the employer.
2952. **Mr Stewart:** I agree.
2953. **Mr Lunn:** Maybe I —
2954. **Mr Stewart:** They will continue to exercise that function.
2955. **Mr Lunn:** — will regret having said that. I am almost starting to agree with you but do not. Voluntary grammar schools in particular would like nothing better than to have paragraph 10(c) clarified to the point at which they could quite clearly continue to be the employer and in all respects responsible for their own staff-related employment matters.
2956. **Mr Stewart:** Absolutely, but we understand their position on that. They would like it to be the case that we simply not change the employment arrangements at all for those schools. Unfortunately or fortunately, that is not the Executive’s policy, and it would ignore paragraph 5 of the heads of agreement, which we cannot ignore.
2957. **Mr Lunn:** I do not know whether it is the Executive’s policy and do not expect you to comment on that. We all know that the Executive’s policy is completely ambiguous and needs clarification. If you think that I am putting this on the record just because Hansard is here, you are exactly right. The situation is intolerable and has to be clarified. We are running out of time to scrutinise the Bill properly, and a major issue such as that remains to be clarified.
2958. **Mr Stewart:** Trevor, we absolutely recognise the importance of the point and the centrality of resolving this. As we said before, and forgive me for repeating this: the starting point is the heads of agreement. It does not have the clarity and precision of law. There is a degree of tension or incompatibility between two of its paragraphs. We have sought to resolve that in the Bill, and it is the Minister’s view that we have done so. It is the view of some stakeholders that we have not. Those stakeholders have been making representations to political parties, which will decide whether they feel that any changes to the Bill are necessary. We appreciate that the Committee will wish to see the outcome of that as soon as possible — much sooner than now. However, as soon as it is available, we will bring it to Committee, but it is unfortunately not available today.
2959. **Mr Lunn:** I have one more question, Chairman. You will be thankful that I am off that tack.
2960. The tribunal will be able to order ESA to approve a scheme or a modified version of a scheme. The tribunal will also be able to devise an alternative scheme and require it to be approved by ESA. I may not have read it in enough detail, but that seems fairly strong, given that ESA is putting down model schemes. Why would a tribunal want to devise something that goes beyond a model scheme already submitted?
(The Deputy Chairperson [Mr Kinahan] in the Chair)
2961. **Mr Stewart:** It is extremely strong and, I must say, a very unusual function of a tribunal. In my experience, tribunals normally review the decisions of other bodies but do not often take on, as it were, the function of another body and perform its function for it. However, that is exactly what is provided for in this case. I think that the only answer that I can give is that it reflects the grave concerns expressed by stakeholders about ESA acting properly in the spirit and to the letter of the heads of agreement. It was felt that there

- would be sufficient safeguards only if the tribunal had this ability to make a scheme. It is unusual but reflects the concerns that were brought forward. After listening to those concerns, the Minister has provided for this in the Bill.
2962. **Mr Lunn:** I suppose that in some quarters it may be a comfort. However, the tribunal is appointed by OFMDFM, so a tribunal appointed by a completely different Department has the power to impose a scheme on the overarching body that is supposed to be running the administration of education. That is quite strong, is it not?
2963. **Mr Stewart:** It is very strong. I think that it reflects the public and political importance attached to education and the need for, in this case unusual but necessary, arrangements that enable everyone to have the trust and confidence that the arrangements will work properly and legitimate interests in education will be protected as we move forward. It is unusual; I have never seen this sort of approach in any other public service, but it reflects how unique education is and the strength of feeling attached to it.
2964. **Mr Lunn:** It is definite, at least. There is no ambiguity in it, and it is not like the clause — I forget which one — that requires ESA and boards of governors to bat things back between themselves till kingdom come. This at least provides a procedure to bring something to a conclusion.
2965. **Mr Stewart:** I know the clause to which you refer, and I hope that it does not end up in a situation in which things are batted back and forth endlessly. Certainly, this one is clear, and the intention from the outset was to limit very significantly what ESA could do in any situation in which it disagrees with a board of governors. In the previous Bill, or in the earlier iterations of the thinking that led to this Bill, we started off with ESA having a great deal of discretion about how it might act if it felt that a scheme had not been properly drawn up. That led to considerable concern among many stakeholders, and we have moved to a point at which ESA has no discretion. It simply applies a test that is clearly set out in the Bill, and the test is whether the scheme complies with statutory requirements. If it does, it must approve a scheme; if it does not, it goes off to the tribunal, and the matter is out of ESA's hands, and the tribunal will decide.
2966. **Mr Lunn:** As the meerkats would say, "simple".
2967. **Mr Rogers:** I was going to go back to the indemnification issue, but I think that it has been flogged to death.
2968. I am looking at paragraph 6 of the schemes of employment. There was some confusion — perhaps confusion is the wrong word — when the voluntary grammar schools were here giving evidence about the role of trustees and so on. Is there a change in the power of trustees? The draft guidance states:
- "a school's submitting authority will determine the role of the Board of Governors and of ESA within the processes for the selection of persons for appointment to posts within the school."*
2969. Is there a slight change there? Is it more definite now?
2970. **Mr Stewart:** There is a change for voluntary grammar schools for schemes of management. At present, the submitting authority is the board of governors; on foot of the Bill, it would be the trustees of a school.
2971. **Mr Price:** May I clarify that sentence? It refers to how a submitting authority develops its scheme. In that scheme, it will determine the role of the board of governors and of ESA, within the processes for the selection of persons for appointment. That has always been the case. That is a constant of the Bill.
2972. **Mr Rogers:** Schools' schemes will have to have the level of specification of which posts they will require assistance with and so on. Will that be determined in the scheme?
2973. **Mr Price:** They must say something about specified posts. They must clarify

- that none of the posts in a school will be specified, in which case a board of governors will retain responsibility for the appointment of those posts, or they must clarify which posts, if there are to be any, are to be specified posts. It must be clear, one way or the other. They have total flexibility.
2974. **Mr Rogers:** However, as Chris said last week, they can adjust that scheme at various times.
2975. **Mr Stewart:** They can adjust it at any time.
2976. **Mr Price:** It is up to them.
2977. **Mr Rogers:** I will now move to paragraph 117 of the schemes of management. It mentions guidance from the Department with regard to “In Committee” minutes or sessions. Are boards of governors obliged to comply with the Department’s guidance?
2978. **Mr Stewart:** Guidance is sometimes referred to as soft law. It does not have the force of law, but there will be a requirement on a board of governors to have regard, or due regard, to reasonably take it into account, but boards certainly do not have to follow it slavishly. I think that that reflects the emphasis that Paul was placing earlier on the guidance and model schemes being minimalist. Genuinely, we do not want to tie down or restrict the autonomy that submitting authorities have in devising these arrangements. The guidance is intended to be helpful to them, and, along with the model schemes, it is intended to set out the minimum content and things that we feel absolutely must be, or ought to be, in schemes. Beyond that, the way in which submitting authorities take that into account is a matter for themselves. What they do beyond that, and whether they use it or add to it to draw up their schemes, is entirely a matter for themselves. It is not a case of command and control around those arrangements. That concern has often been expressed to the Committee. What you are beginning to see now, as we have the outworkings of particular clauses, is clear evidence that that is not the case. It is simply not an approach that we are taking to command and control what submitting authorities will do in relation to those schemes.
2979. **Ms Boyle:** Paragraph 46 of the schemes of management states:
- “It is the duty of the Board of Governors, under Article 18 of the Education and Libraries Order, 2003, to decide on the measures to be taken by all persons associated with the school (whether by the Board of Governors, the school staff or other persons) to protect pupils from abuse, whether at school or elsewhere”.*
2980. I am looking for some clarity on the word “abuse” — what types of abuse that will include — and, in particular, the word “elsewhere”. I am asking for clarity because a number of elected representatives and I are contacted from time to time about issues that happen outside of a school. Perhaps people went to a school and to a board of governors and were told that if something happens outside of a school, they do not have any control. That paragraph also refers to “child protection within the school”.
2981. **Mr Stewart:** The definition of abuse would be the very broadest definition, including all forms of abuse — physical, emotional, sexual and neglect, for example. There is nothing that we have consciously left out of that. Indeed, that point was questioned by colleagues in the Department of Health, Social Services and Public Safety (DHSSPS), and legislative counsel clarified that abuse as drafted is a very broad term and covers everything that we could think of that could possibly be covered.
2982. **Ms Boyle:** What about abuse by social media — texting and social networking sites?
2983. **Mr Stewart:** Absolutely. Bullying would definitely a form of abuse.
2984. As for the use of “elsewhere”, we cannot legislate to place a duty on boards of governors beyond the places or activities that they have control of. If something happens in the street, for example, that would not be covered by the duty, but if something happens

while a child is being transported to and from school, it would be covered; I think that it is the responsibility of a board of governors to ensure that arrangements cover that. If something happens on a trip away from a school, even though a board of governors is not in charge of the premises, it is essential that it puts in place suitable child protection arrangements to ensure that children are safe. So the use of the word “elsewhere” broadens the duty. It gives a considerably broader scope, but there are limits. We cannot, for example, make boards of governors responsible for what happens in a child’s home. That would clearly not be reasonable.

2985. **Ms Boyle:** If there was abuse of a pupil by other pupils outside of school hours, perhaps on the way home from school, is that included?
2986. **Mr Stewart:** Yes, I think that it would be.
2987. **Mr Lunn:** I am sorry to come back again, Chairman. The schemes of management indicate that ESA may nominate an officer to attend a board of governors meeting, but it seems that that is not a mandatory part of the management scheme.
2988. **Mr Price:** Is that paragraph 87?
2989. **Mr Lunn:** Yes. What are the circumstances in which a board of governors would be obliged to admit an ESA representative to a board of governors meeting?
2990. **Mr Price:** Schedule 2 provides, for instance, that an ESA officer must attend proceedings to dismiss a member of staff. That is to do with clause 38(2), which provides that schools and ESA must work together to raise standards. In the draft scheme of management there is an example of how a school may, in its scheme of management, reflect that co-operative duty. However, paragraph 87 is of itself optional. A school can choose not to have that in its scheme of management. Although we have tried to keep the statutory requirements to a minimum, occasionally we cannot avoid practical suggestions or recommendations. We

need to be clear in identifying those for a reader when there are, perhaps, explanatory notes locating the basis for each statutory requirement or otherwise.

2991. **Mr Stewart:** One of the challenges for Paul and his team is that we have to produce guidance that covers the needs of all schools. As we know, that is extremely variable. There are many large post-primary schools in all sectors that will feel that they have a great deal of capacity in their boards of governors to deal with all these matters and that they, quite rightly, need little, if any, help from ESA. However, other boards of governors, particularly in smaller schools simply because the boards of governors are smaller, will feel that they do not have sufficient capacity. They will, quite rightly, look to ESA to provide advice and support, particularly on professional HR matters, which is entirely legitimate. Trying to capture those contrasting needs in one piece of guidance is difficult, and Paul and his team have taken the right approach, which is to provide the backstop. Paragraphs such as paragraph 87 are there to be incorporated in schemes if schools feel that they need them, but if they do not, they can easily leave them out.
2992. **Mr Lunn:** According to paragraph 117, if a board of governors decides that it wants to meet in closed session, it seems that it has to comply with departmental guidance, but that is not mandatory, apparently. I am trying to frame a question here. If that is just departmental guidance, to what extent are boards of governors obliged to give due regard to it?
2993. **Mr Price:** I will parrot my colleague: they do not have to follow it slavishly. It is a reasonable application for guidance.
2994. **Mr Stewart:** Again, forgive me for repeating the answer, but guidance is guidance. The misdemeanour that we are most frequently accused of is trying to command, control or interfere in schools. When possible, we try not to do that because the evidence is very clear — we have said it previously — and we know what successful schools

- look like. Successful schools are those that have the autonomy to run their own affairs and an effective mechanism for holding them to account, but successful education systems are not those that are characterised by command and control. So we tend to provide for guidance rather than regulation, and guidance is guidance.
2995. **Mr Lunn:** As you probably know by now, I am perfectly happy with the situation in which schools run their own affairs under management and employment schemes but have access to ESA when they need it. That is the way it ought to be. Are there any circumstances, apart from dismissal, in which ESA can demand to be represented at a board of governors meeting in respect of a failing school or something like that? Can they demand that a school discuss a particular matter in an open rather than a closed session?
2996. **Mr Stewart:** Not specifically, Trevor, apart from an issue that we mentioned last week around child protection. Paul referred to a particular provision, which is central to ESA's key role in raising standards. It is a duty on boards of governors to co-operate with ESA. We have put it no more strongly than that, so there are no specific powers for ESA to command, control or direct schools in raising standards, but there is a duty on a board of governors to act reasonably, co-operate and engage with ESA in what it is trying to do.
2997. There are strong backstop powers in legislation, but they remain with the Department. So article 101, which is the power to direct, is for the Department. The power to remove boards of governors is for the Department, not for ESA. On the rare occasion when it is necessary, powers generally to intervene in schools will be reserved for the Department.
2998. **Mr Lunn:** I will return to the issue of indemnity. If ESA is going to be the —
2999. **Mr Stewart:** We clearly have not satisfied you on this point. We will have to work harder.
3000. **Mr Lunn:** I can relate indemnity to insurance. If an insurance company is dealing with a liability claim, it expects the claim to be handed over for it to deal with. If an employer or customer takes actions off their own bat that may be prejudicial to the claim, it could be prejudicial as to whether or not they are paid. If I were ESA and were looking at a serious situation involving child abuse, for instance, I would have concerns if a board of governors kept saying, "We do not need you; we will not admit you to these discussions. We will operate in closed session so you do not see the minutes, but we expect you to pick up the tab at the end of it all."
3001. **Mr Stewart:** I think that we would also have concerns. Paul has rightly emphasised the indemnity that ESA and the Department would provide. That is not entirely unheard of today. We indemnify boards of governors, particularly those with delegated budgets. The advice that we normally give to them is that, having taken advice, with indemnification comes an expectation that a board of governors will act reasonably and in good faith. If a board of governors, acting reasonably and in good faith, nevertheless makes a mistake, I think that it is reasonable that it is indemnified for the consequences of the action that it has taken. However, if a board of governors wilfully disregards advice and assistance, acts in bad faith and does something wrong, it may find that the indemnity does not extend to cover that action. I defer to your knowledge, Trevor, but I doubt very much whether an insurance policy would cover that either.
3002. **Mr Lunn:** Would a refusal to allow ESA to be involved in discussions about a particular situation constitute a wilful act? If an action is reasonable, accidental or unintentional, liability is, obviously, fairly clear.
3003. **Mr Stewart:** I think that it would depend on the circumstances. If, for example, a board of governors said that it had HR expertise on its board, that one of its governors was a HR director with a long experience of employment law and

that there was nothing that ESA could tell it that its member could not tell it, that would be perfectly reasonable. If, on the other hand, a board of governors said that none of its members had dealt with HR matters and that, nevertheless, it was refusing to take our advice, that would begin to press against the limits of reasonableness.

3004. **Mr Rogers:** I want a wee bit of clarification on inspections. Paragraph 62 of the schemes of management states that there is an option to invite other members of an inspection team to a meeting during a formal inspection. Is there also an option to bring in other members of an inspection team at the end of the process?
3005. **Mr Price:** Absolutely. The scheme can be adapted. I think that it is right to describe it as an option. Is that correct?
3006. **Mr Stewart:** Yes.
3007. **Mr Rogers:** Would that be through consultation between the chair and the reporting inspector?
3008. **Mr Price:** Yes.
3009. **The Deputy Chairperson:** To be clear: these schemes are drafts and provide models. We will wait to see what OFMDFM and others think about them. They are out there with everybody.
3010. Chris, Paul, Mervyn and Robbie, thank you very much indeed.

27 February 2013

Members present for all or part of the proceedings:

Mr Danny Kinahan (Deputy Chairperson)
 Ms Michaela Boyle
 Mrs Jo-Anne Dobson
 Mr Chris Hazzard
 Mr Trevor Lunn
 Mr Sean Rogers

Witnesses:

Mr Peter Burns
 Mr Chris Stewart *Department of Education*

3011. **The Deputy Chairperson:** We are continuing our informal clause-by-clause scrutiny of the Education Bill. Members have the Committee Clerk's cover note and a clause-by-clause scrutiny table, which summarises all the written and oral evidence and sets out the proposed amendments.
3012. In this meeting, we will consider each of the more straightforward clauses in turn and the proposals for amendment, as set out in the table. As necessary, I will ask the Department to remind the Committee of its evidence on the clauses and the amendments. I will then ask members to indicate their views. If there is consensus on a clause, the Committee Clerk will update the table accordingly. The minutes of the meeting will indicate that there is informal agreement. If there is no consensus, I will ask members to set out their different viewpoints. The Committee will then informally determine its position. At this stage, no votes will be taken. The Committee will divide on a clause, as necessary, only during the formal clause-by-clause scrutiny.
3013. We previously agreed informally that we were content with clause 1. We have just listened to advice on clause 2. I propose that we leave further consideration on clause 2 until later.
3014. We also previously agreed to park clauses 3 to 9 and schedule 2, pending a response on the heads of agreement question.
3015. Members also agreed to park clause 13, pending further information on the delegated nature of employment responsibility in schools.
3016. That leaves us to scrutinise informally clauses 10 to 12 and clauses 14 to 69, schedule 1 and schedules 3 to 8. I propose that we begin with clause 10 and continue until 1.10 pm today and resume next Tuesday, if necessary. Are we all agreed?
- Members indicated assent.*
3017. **The Deputy Chairperson:** Clause 10, "Transfer to ESA of staff employed by Boards of Governors", applies schedule 3, which allows for the transfer of staff employed by boards of governors of voluntary schools other than Catholic maintained schools and grant-maintained integrated schools to the education and skills authority (ESA). Schedule 3 indicates that transferring staff will be afforded protections from the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). I propose to deal with schedule 3 later. For now, let us deal with clause 10.
3018. The Department has helpfully provided a diagram, which is included in members' tabled items. That paper shows the legal definition of schools in Northern Ireland.
3019. **The Committee Clerk:** On a point of information: clause 10 is dealt with on page 21 of the table. Some members have the red folder with them, so well done. If you do not have the folder, I have included in the tabled items a submission that applies here from Comhairle na Gaelscolaíochta (CnaG). If you are a little bit at sea, we also have some updated folders with all the submissions. If you need them, staff will bring them.

3020. As the Department indicates, clause 10 applies schedule 3, which deals with the TUPE arrangements for staff transferring to ESA. The amendments are proposed by CnaG and appear to be linked to a number of other similar amendments that are designed to give Irish-medium education a separate legal status. CnaG's submission explains what it is after. Members may therefore wish to take a view on the position put forward by CnaG that Irish-medium schools should have a separate legal status.

3021. **Mr Chris Stewart (Department of Education):** I will make a couple of points that relate to clause 10. We absolutely understand CnaG's central point about the identity of Irish-medium schools. Indeed, elsewhere in the Bill, the Minister has indicated that he is prepared to consider amending the definition of "Irish-speaking school" in line with what CnaG is looking for. However, in this instance, CnaG's concerns are misdirected. This is not the right clause by which to achieve what CnaG is looking for. Indeed, the amendment would damage the clause quite significantly and prevent it from working as intended.

3022. The clause is relatively straightforward: it is intended to transfer staff currently employed by boards of governors to the employment of ESA. So the requirement is to identify all schools that are currently employers in their own right, and that is what we have done in clauses 10(2)(a) and 10(2)(b). The schools involved are voluntary, which includes all Irish-medium schools and voluntary schools other than Catholic maintained schools. You may ask why Catholic maintained schools are excluded there: it is because they are dealt with in another clause. Employees of Catholic maintained schools are employed by either the Council for Catholic Maintained School (CCMS), in the case of teaching staff, or by education and library boards, in the case of non-teaching staff, and other provisions will transfer them. So we have included voluntary schools other than Catholic maintained schools, and

all grant-maintained integrated schools. The net effect of the clause is to transfer all those staff who are currently employed by boards of governors to the employment of ESA — no more and no less. We urge the Committee to reject the CnaG amendment, which would simply interfere with the proper outworking of the clause.

3023. I will mention an issue about timing. If members look at the commencement arrangements for the Bill, they will see that that particular clause and the associated schedule will commence the day after Royal Assent. That does not mean that the transfer takes place on that date. Those provisions have to be commenced early so that we can make the transfer schemes, but the transfer schemes will come into effect only when ESA is established, which will be at a later date. It is not that the staff are transferred the day after Royal Assent; it is that the power to make the schemes to do the transfer commences then.

3024. **Mr Lunn:** I can understand what CnaG is after. Chris, you rightly said that this is not the right clause in which to bring it up. What is the right clause?

3025. **Mr Stewart:** It is probably clause 63. One of the main drivers for suggesting a different definition for an Irish-speaking school, and, indeed, the inclusion of a definition of a Catholic school, is to make sure that we have clarity around the sectoral bodies. A sectoral body is a body that represents schools of a particular description, so we need to make sure that the particular descriptions are right in education law. I suspect that would be introduced towards the back of the Bill.

3026. **The Deputy Chairperson:** I am just checking whether we reach clause 63 today.

3027. **Mr Lunn:** We will get there eventually.

3028. **The Deputy Chairperson:** We might eventually.

3029. **Mr Stewart:** I will try to make my answers shorter. *[Laughter.]*

3030. **Mr Lunn:** I think that people are disappearing here, Chairman.

3031. **The Deputy Chairperson:** Are we content to allow for staff to transfer from the voluntary grammar and grant-maintained integrated schools to ESA?

Members indicated assent.

3032. **The Deputy Chairperson:** Do we agree that Irish-medium schools require a separate legal identity from other types of school?

Members indicated assent.

3033. **The Committee Clerk:** To be clear: are members therefore agreeing that they want to amend the clause in line with what CnaG has suggested by way of a separate identity for Irish-medium schools?

3034. **Mr Lunn:** Which clause are we talking about? Are we still on clause 10?

3035. **The Committee Clerk:** Yes.

3036. **Mr Lunn:** No, we are not. We have taken the advice of the Department that clause 10 is not the correct clause to do that.

3037. **Ms Boyle:** We are taking the advice of the Department.

3038. **Mr Rogers:** When we come to clause 63 or whatever —

3039. **The Committee Clerk:** Could members say that aloud because it is being recorded for the Hansard report, and nods are not recorded? We are at our quorum now, so if anybody leaves, we will have to stop. So that seems to be clear. Members are content with clause 10, informally, as drafted, but you want to pick that issue up again at the appropriate clause?

3040. **Mr Lunn:** That is correct.

3041. **The Deputy Chairperson:** We will move on to clause 11, “ESA to employ peripatetic teachers”. The clause defines a peripatetic teacher as a teacher teaching subjects in a number of schools or providing special education provision. The clause requires ESA to devise and revise a scheme for the

appointment of such teachers. The scheme will set out the number of peripatetic teachers employed by ESA and will ensure that such teachers will not teach in a grant-aided school unless the board of governors approves. Again, I ask the Department to explain the clause and comment on CnaG’s remarks.

3042. **Mr Stewart:** Again, clause 11 is relatively straightforward. There is a need for peripatetic teachers in education. It seems logical that ESA should have the function of employing those teachers, but there are two important caveats. ESA needs to do that in the same way that a board of governors would, subject to the same requirements as a board of governors. So there is a requirement on ESA to have, as it were, its own employment scheme and to follow the same legal requirements as a board of governors in doing so.

3043. It is also important that this scheme does not cut across the general policy commitment that it is only a board of governors that will decide who works and who does not work in a particular school. That is why the requirement is there that a peripatetic teacher cannot be appointed to any school without the agreement of a board of governors.

3044. We understand where CnaG is coming from, but what is proposed is unnecessary. The clause is permissive. It allows ESA to employ peripatetic teachers, but it does not give it a monopoly on that. If a group of Irish-medium schools, or any other group of schools, wish to come together to appoint a shared teacher, if I may use that phrase, they are entitled to do that under the Bill’s clauses. It is not necessary to amend clause 11 to provide for that.

3045. **Mr Lunn:** Sorry about this, Chairman. Under the CnaG proposed amendment, there are two categories in which there is a particular special need. One of them is special education, and the other is the ability to speak and teach in Irish. I think that they are both quite individual, when there is a separate requirement. I have some sympathy with CnaG’s

- position. You may say that it is not necessary and that the clause already permits the employment of peripatetic teachers to teach in Irish, but I am trying to think it through. If it is not necessary for Irish to be specifically referenced in that clause, why is it necessary to reference special education?
3046. **Mr Stewart:** You have answered the question for me, Trevor. We do not think that it is necessary. Specifying the ability to teach in Irish belongs in a job description and personal specification for a post rather than in primary legislation. If you were to follow through on the lack of logic of the CnaG amendment, we would have to list the ability to teach science, languages and all the skills and qualifications that peripatetic teachers might have. That clause absolutely permits ESA to employ peripatetic teachers and to specify in doing so that they should have the ability to teach in Irish.
3047. **Mr Lunn:** No. The proposed amendment states that a peripatetic teacher is:
- “a teacher employed —*
- (a) to teach a particular subject or group of subjects in a number of schools or otherwise than in a school”.*
3048. I think that you could make an assumption that that includes general curricular subjects and the English language. The particular special requirement is peculiar to those two groups: special education; and when there is a real need. An English-speaking teacher cannot teach in an Irish-medium school, so perhaps it needs to be clearly defined. Alternatively, if you go about it the other way, neither needs to be defined.
3049. **Mr Stewart:** We do not think that it is necessary to define either of those things in this clause. I do not claim to be an expert in special education provision, but it is manifestly different from other forms of education and would be specified elsewhere. Peter will keep me right because he used to work in that area. I think that special education provision is defined elsewhere in educational law.
3050. **Mr Peter Burns (Department of Education):** It is in the 1996 order.
3051. **Mr Stewart:** It is in the 1996 order, as Peter has helpfully reminded me. This is a broad enabling clause. It places on ESA no restriction on the type of peripatetic teachers who would be employed, on the subject that they would teach or on the qualifications that would be required. It would certainly be possible to specify any or all of those things, but we simply do not think that it is necessary to do so.
3052. **Mr Lunn:** However, it seems to be necessary to specify special education.
3053. **Mr Stewart:** I think that that is because special education provision has a particular definition, and the requirements for special education provision are unique.
3054. **Mr Lunn:** So is the requirement for Irish-medium education. It is unique because it is in Irish. I do not know why I am sitting here making the case for the Irish-medium sector when nobody else is speaking. I will leave it at that.
3055. **The Deputy Chairperson:** Thank you.

5 March 2013

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

Witnesses:

Mr Peter Burns
 Mr Chris Stewart *Department of Education*

3056. **The Deputy Chairperson:** Chris and Peter, thank you very much, yet again, for coming in. In this session, we will consider each of the more straightforward clauses in turn and the proposals for amendments as set out in the summary table that has been provided. As necessary, I will ask the Department to remind the Committee of its evidence on the clauses and amendments. I will then ask members to indicate their views. If there is a consensus on a clause, the Clerk will update the table accordingly. The minutes from this meeting will indicate that there is informal agreement. If there is no consensus, I will ask members to set out their different viewpoints. The Committee will then informally determine its position. At this stage, no votes will be taken. The Committee will divide on a clause as necessary only during the formal clause-by-clause scrutiny. If that is clear, I will continue.
3057. We previously informally agreed that we were content with clause 1. We heard advice on clause 2, and I propose that we leave further consideration of that clause until later. We also previously agreed that we would park clauses 3 to 9 and schedule 2, pending a response on the heads of agreement question. We also agreed to park clause 13, pending further information on the delegated nature of employment responsibility in schools.
3058. At its previous meeting, the Committee agreed that it was content with clause 10, although issues relating to Irish-medium schools will be picked up as part of our consideration of clause 63.
3059. That leaves us with clauses 11 and 12, clauses 14 to 69, schedule 1 and schedules 3 to 8 to formally scrutinise. I propose that we begin with clause 11. We will continue until 12.30 pm today and begin again tomorrow.
3060. Clause 11 is entitled “ESA to employ peripatetic teachers”. This clause defines a peripatetic teacher as a teacher who teaches:
“subjects in a number of schools”,
or who provides “special educational provision”.
3061. The clause requires the Education and Skills Authority (ESA) to devise and revise a scheme for the appointment of such teachers. The scheme will set out:
“the number of peripatetic teachers employed by ESA”,
3062. and will ensure that such teachers do not teach in a grant-aided school unless boards of governors approve.
3063. There was some discussion on clause 11 last week. I will ask the Department to explain the clause again and to comment on the commentary that Comhairle na Gaelscolaíochta (CnaG) provided.
3064. **Mr Chris Stewart (Department of Education):** Thank you, Chairman. I think that you summed up the effect of the clause very neatly. You will appreciate that clause 11 is a relatively straightforward clause that would allow ESA to employ peripatetic teachers to teach in more than one school in much the same way as education and library boards (ELBs) do now. As you said, the

- clause places requirements on how ESA will do that and reinforces the need for boards of governors to have the final say on whether a peripatetic teacher is employed.
3065. The suggested amendment from CnaG, which Trevor asked about last week, was that we should specify in the clause ESA's power to employ teachers who could teach in Irish. We feel that that is an absolutely laudable and reasonable aim, but we do not feel that the clause needs to be amended to provide for that. It is not necessary to specify that in legislation. It would be quite open and proper for ESA to employ peripatetic teachers with the ability to teach in Irish. It would equally be possible for Irish-speaking schools to do that themselves on a joint basis.
3066. Members can perhaps compare clause 11 with clause 3, which I know they deferred their consideration of. Clause 3 is the overarching clause, which would mean that ESA would be the employer of all staff in all grant-aided schools. It is not thought necessary to specify in that clause teachers with Irish-language qualifications or, indeed, any other qualification. We see the appropriate place for that as the job description or person specification for particular posts. That could also, perhaps, be included in the employment schemes but not in primary legislation.
3067. **The Deputy Chairperson:** Thank you. Are there any comments?
3068. **Mr Lunn:** Do you think that there are enough peripatetic teachers who can teach in the Irish language to go around? What is the situation with the demand for teachers in the Irish-medium sector?
3069. **Mr Stewart:** The only honest answer that I could give is that I do not know, Trevor. I think that we would need to consult CnaG and the Irish-medium sector and take a view from them about whether the supply is adequate. I infer, perhaps wrongly, from CnaG's interest in this clause that it perhaps sees that there is not a sufficient supply of teachers and that that is why it feels that the opportunity for peripatetic appointments is so important. Perhaps there are not enough Irish-speaking teachers to go around.
3070. **Mr Lunn:** I am not in CnaG's confidence, but that seems to be the most likely reason why it has concerns about the clause. It is all very well having an order, but perhaps what CnaG is driving at is that there is a need to train more Irish teachers to meet the particular demands of that sector.
3071. **Mr Stewart:** It may be right on that. However, again, specifying teachers who are qualified to teach in Irish in that way would not directly affect the supply situation. The encouragement and facilitation of people who have a sufficient ability in Irish as a language to enter the teaching profession would affect that situation.
3072. **Mr Lunn:** I think that what they are probably getting at is that having Irish as a second language is not really a sufficient qualification to enable a person to teach in Irish-medium schools, where the entire setting is in Irish.
3073. **Mr Stewart:** I think that that is right. I do not claim any particular personal expertise in immersion education. However, having engaged with CnaG down the years, I think that you are absolutely right. What it would say is that one of the real values of immersion education is not simply that lessons are conducted in Irish but that children, many of whom do not come from Irish-speaking households and, perhaps, do not speak Irish all the time outside school, are immersed in the Irish language throughout their school experience. All the day-to-day activities of the school in and around the classroom take place in Irish, and that is how they acquire, strengthen and develop richness of understanding. You are absolutely right. For that to happen, it is not sufficient for someone to be a teacher. It is not even sufficient for them to be able to deliver lesson plans in Irish. They need to be a fluent Irish speaker.

3074. **Mr Lunn:** Yes. I suppose that there are two ways that we could clarify that. The Department could find out what the situation is with the number of Irish teachers compared with the demand, or I could ask CnaG what its point is.
3075. **Mr Stewart:** We could certainly provide information to you on that. I have to say that it is still my view that, even if what we both suspect is confirmed, the suggested amendment would not make any difference.
3076. **Mr Lunn:** It might put pressure on the Department to arrange for the training of more Irish teachers. If you put something into a clause, whether it is specified in the way that CnaG would like it or not specified in a way that you think is perfectly adequate, there needs to be enough teachers to satisfy demand. If we forget about Irish-medium education and see this as an all-encompassing clause, which it actually is, it depends on there being enough spare teachers, whatever the sector.
3077. **Mr Stewart:** You will know that overall responsibility for the supply and demand of teachers is shared between us and the Department for Employment and Learning (DEL) but that it lies mainly on the DEL side. Given that this is, therefore, a cross-cutting matter, if a view were taken at Executive level that there is a need to legislate generally or for some particular aspect of teacher supply, our advice would be that you would need a bespoke provision. We would need to be absolutely clear about what the policy intention is, what the problem is that we are trying to remedy and then come up with a bespoke provision that would achieve that.
3078. It is rarely a good idea to try to fix problems in passing by tacking a solution on to something else, and, honestly, I do not think that that would work in this case.
3079. **Mr Lunn:** I am tempted to comment on that in the light of what is happening in the Assembly at the moment. However, I will not go there.
3080. **Mr Stewart:** Let me assure you that I was not referring to anything in the Criminal Justice Bill.
3081. **The Deputy Chairperson:** Thank you. We will move on.
3082. **Mr Hazzard:** Thank you. Would the suggested amendment create any active duty on the Department to meet that supply need? You sort of touched on that already. Is an attempt being made to do that? Would it work?
3083. **Mr Stewart:** It may do. I hesitate, because I think that it may work in an unhelpful way. The Office of the Legislative Counsel (OLC) often advises us to be very careful when we specify something or pick something out from a longer list, because that can sometimes have unintended consequences. If we were to make specific mention of Irish-speaking teachers, a court might look at that and say that there must have been some reason behind that, that the Assembly must have had something in mind or that the Assembly must have decided that it was more important to have Irish-speaking teachers than English-speaking geography teachers or something else. For that reason, we always need to be very careful about picking things out.
3084. To give you an example, once or twice we explored with the OLC whether we needed to pick out particular instances of things that the power of direction in article 101 of the Education and Libraries (Northern Ireland) Order 1986 could be used for. He advised very strongly against it. He told us that, if we picked out particular things, a court may feel that that is all that we are allowed to use article 101 for, and that might then restrict our ability to use it elsewhere.
3085. If I sound reluctant, it is simply for technical reasons. The policy question of whether there should be something to address the supply of Irish-speaking teachers is a matter for Ministers, this Committee and the Assembly. If there is a consensus that something needs to be done, our technical advice would be

- that it would best be done by a specific provision. We should know exactly what the problem is that we are trying to fix and come up with a specific provision to address it.
3086. **The Deputy Chairperson:** Members, are we content with the definition of the term “peripatetic teacher”?
- Members indicated assent.*
3087. **The Deputy Chairperson:** Are we content for ESA to devise and revise schemes for appointment, and are we happy with the assurance in the clause that those teachers will teach in schools only with the permission of the board of governors?
3088. **Mr Lunn:** You ask whether we are happy with the definition. Where is the definition?
3089. **The Deputy Chairperson:** It is at clause 11(2):
- “In the Education Orders ‘peripatetic teacher’ means a teacher employed.”*
3090. **Mr Lunn:** Yes. Sorry.
3091. **The Deputy Chairperson:** OK. Are you happy?
3092. **Miss M McIlveen:** Just for clarification, this is really just informal scrutiny, so at this stage, we do not have to declare whether we are happy or unhappy.
3093. **The Deputy Chairperson:** So, we just leave it, I think.
3094. **The Committee Clerk:** The idea of informal clause-by-clause scrutiny is that the Committee informally sets out its position. That means that, when we come to formal clause-by-clause scrutiny, if I know that the Committee is of a mind to support an amendment, I will have that amendment to hand and the Committee could then vote. So, it is essential that, at the informal clause-by-clause scrutiny, members indicate informally where they are on a particular clause, how they feel about particular amendments and whether they like them or not.
3095. **The Deputy Chairperson:** What about if we wanted to reserve judgement?
3096. **Miss M McIlveen:** It is my understanding that, as we move through the Bill, this is just an opportunity for the Department to provide clarification. Surely to declare at this stage is a little premature.
3097. **The Committee Clerk:** No. The procedural advice that I give members is that, at informal clause-by-clause scrutiny, it is asked that members set out their position so that when we come to formal clause-by-clause scrutiny, as I said, I will have the amendments to hand — drafted, hopefully — on the issues that members feel are important and want to see in the Bill, as well as the changes that they want to make. So, it is essential that members set out their position.
3098. **The Deputy Chairperson:** Can members not just say that they are not happy at the moment and that they want to reserve their judgement? That is what parties will be doing.
3099. **The Committee Clerk:** I think —
3100. **Miss M McIlveen:** I think that we will be reserving our judgement on quite a lot of the Bill.
3101. **The Deputy Chairperson:** Exactly.
3102. **Miss M McIlveen:** I thought that the purpose of the scrutiny’s being informal was that, if issues were raised, they could be clarified as we moved through the Bill.
3103. **The Committee Clerk:** The idea of the evidence sessions with departmental witnesses, writing them letters and getting legal advice, and so forth, was to answer all the questions that members had. As I think I indicated a couple of weeks ago, at this point, members should know where they are on each clause. If they choose not to set that out, that is a matter for members.
3104. The report that the Committee produces is its advice to the Assembly. It is the Committee saying, “Here is what we think about clause 4.” If members choose

- not to give an opinion on a clause, that is not particularly helpful for the Assembly, but I guess that parties could make up their own mind. That is the idea of the report that drops out at the end of the Committee Stage. If members are not prepared to indicate their positions, it would be helpful if they would indicate that, and the report that I write may be very short and not particularly useful to the Assembly. So, I ask members to bear that in mind and make a judgement on what they want to say.
3105. **Miss M McIlveen:** This is informal, and we will still be returning to the Bill at a formal stage, so there will be a further opportunity.
3106. **The Committee Clerk:** The Bill Office advises that if you want a particular amendment or have an issue that you are very concerned about, we really need to flush that out now so that when we come to formal clause-by-clause scrutiny, you can simply take a vote. Right now, I do not know how members would vote on most of the amendments in that summary table or on any of the clauses. That is the idea of informal clause-by-clause scrutiny. I do not need to say that again, because I am sure that you have heard me say it many times.
3107. **The Deputy Chairperson:** I take that on board, but I think that there will be those of us who will want to reserve judgement.
3108. **The Committee Clerk:** If members will set that out, that is OK. Sorry, I will stop talking now, but just to be clear: the end result of the Committee Stage is a Committee report in which the Committee gives its advice to the Assembly. If members choose not to give very much advice to the Assembly, that is a matter for members. I am content to write the report that you tell me to write, but what usually happens at Committee Stage is a report comes out the other end. The Committee says, "Clause 1 is good, but clause 2 is not so good, and we want to change it in this way." If you do not do that, it may be viewed that you are not giving particularly useful advice to the Assembly. However, that is a matter for members.
3109. **The Deputy Chairperson:** We are on clause 11, and the first question that I was asking was whether members were content with the definition of "peripatetic teacher". I think that we were all happy with that. The second question was whether we were content for ESA to devise and revise schemes for appointment. I think that there may be a difference of opinion on that. Can I have some indication from anyone, or shall we just leave that in the air unanswered? What happens in that case? Will you just write it down as not clear?
3110. **The Committee Clerk:** I will record that the Committee has reserved its position.
3111. **The Deputy Chairperson:** Are we happy, then, that the Committee has reserved its position on the second point?
Members indicated assent.
3112. **Mr Hazzard:** Excuse my ignorance, but are we going to go through this whole process reserving our judgement on everything, creating a mammoth workload problem at the end?
3113. **The Deputy Chairperson:** I participated in the Committee Stage of the Planning Bill, and many things were held over. As much as people were willing to do was done in the Committee and other things were held to the end by parties, which came out with their own amendments at the last moment, when we dealt with them. I know that that is not how you want it to happen, but it is what happens, if I have it correct.
3114. Are we happy with the assurance in the clause that the teachers will only teach in schools with the permission of the board of governors or are we reserving our position?
3115. **Mr Lunn:** That is clear for clause 11(5)(c), yes.
3116. **The Deputy Chairperson:** Are we all clear that we are reserving our position?
Members indicated assent.

3117. **The Deputy Chairperson:** I wish to determine members' views on the clause and on CnaG's amendment.

3118. **Mr Lunn:** I am sorry about this, but clause 11(5)(c) states:

" that a peripatetic teacher may not be employed ... without the approval of the Board of Governors".

3119. Why do we need that? In the context of the overall debate about employment — who employs and who has the day-to-day authority to employ staff — why do we need it?

3120. **Mr Stewart:** It is to give effect, in every circumstance including this one, to the general policy commitment that the Minister has given that only the board of governors will decide on the hiring and firing in a particular school, and to ensure that no one will work in such a school without the say-so of the board of governors.

3121. **Mr Lunn:** I am sure that that is clear through clauses 3 to 12, schedule 2, clause 13 and the heads of agreement. Why, then, is it in there? We constantly hear that the Bill should not state things that are not necessary or that overlap with something else. Therefore, why would that need to be there?

3122. **Mr Stewart:** It is because peripatetic teachers are dealt with separately and have particular and separate employment arrangements. I think that the requirement for the approval from a board of governors stems from concerns expressed frequently down the years to the Committee by some stakeholders that the Bill might somehow include some mechanism for ESA to dictate to schools who their employees would be. The Minister never had the slightest intention of doing that but recognised that the concern was sincerely held. Therefore, he thought it important that, throughout it, the Bill should make absolutely clear that there is no mechanism whatsoever — for full-time single school employees, peripatetic teachers or anyone else — for ESA to dictate to any board of governors who will work in a school. The net effect of

all the provisions is to make good on that policy commitment, and, as I have said before, that includes everyone from the school principal to the visiting music tutor. No one gets to work in a school without the approval of the board of governors.

3123. **Mr Lunn:** That is a classic case of what I harp on about when we look for an extra provision to be put in the Bill that may not be absolutely necessary, and I am sure that the Bill drafter would run rings around me in discussing it. For instance, the CnaG amendment that wants to specify the requirement of Irish-medium education, the ones suggested by the integrated sector and ones by others. OK, we know that it is in the 1986 order, but we would like to see it brought up to date. This to me is a pretty classic case of a provision, the absence of which I am not quite sure what difference would be made, but it is perhaps there to satisfy a concern.

3124. **Mr Stewart:** The answer to Trevor's question may address his concern. The CnaG amendment, if included, would make no difference to the position in law. However, the absence of the provision requiring the approval of a board of governors would make a significant difference in law: it would leave it open for ESA to impose a teacher or teachers on a school. Without that provision, I might be arguing and trying to persuade members that ESA would have no such intention, that it was not part of the Minister's policy and that it would never enter anyone's head to do so. Stakeholders would respond by saying, "Ah, but we don't trust the Department and we don't trust ESA. We would like a provision in the Bill to make sure that ESA can't do that." The Minister listened to those concerns and recognises that they are sincerely held, and that is why the provision is there. Unlike the CnaG amendment, however, it will make a difference in law.

3125. **Mr Lunn:** We have constantly told the grammar schools in particular that they have nothing to worry about and that ESA cannot interfere. Once the school gets its scheme of employment

- and management set up, ESA cannot possibly interfere, unless the school breaches its own scheme or statute. The school's own scheme says that it is the employer of its staff. Surely, by implication, that includes temporary staff.
3126. **Mr Stewart:** It includes temporary staff but not peripatetic staff.
3127. **Mr Lunn:** Where does it say that?
3128. **Mr Stewart:** It is the combination of this clause and clause 3. Clause 11 specifically makes ESA responsible, not just as the employer but as the body that makes the employment decisions. In this case, ESA is for peripatetic teachers who perform the role that, for every other member of staff, would be performed by the board of governors.
3129. **The Deputy Chairperson:** I wonder whether we should be taking legal advice on that or whether we should be happy with what Chris said.
3130. **Mr Lunn:** We are getting sound advice. I am not going to argue the point for ever.
3131. **Mr Stewart:** We are at the disposal of members. I have to say that, if you had asked me which of the clauses might cause members most concern, I would not have picked this one out first.
3132. **Mr Lunn:** OK. Thank you. Very good.
3133. **The Deputy Chairperson:** We wish to determine members' views on CnaG's commentary on the clause. Do you want to reserve judgement on that as well?
3134. **Mr Hazzard:** I am content.
3135. **The Deputy Chairperson:** Is everyone content?
3136. **Mr Lunn:** I will say that I am content, too.
3137. **The Deputy Chairperson:** In what sense are you content? You are content that it is not part of the Bill?
3138. **Mr Stewart:** I think that the member means that I have worn him down.
3139. **Mr Lunn:** Yes. I want to see my wife and kids again.
3140. **The Deputy Chairperson:** Are we content with what the Department is saying, and that it does not need to be included?
- Members indicated assent.*
3141. **The Deputy Chairperson:** Let us move to clause 12, which is titled "Salaries, etc. of staff: administrative and financial arrangements".
3142. The clause allows voluntary grammar schools and grant-maintained integrated schools, where they currently operate their own payment systems for salaries, to continue to do so, subject to agreement with ESA. The clause also allows such schools to opt in to payment arrangements controlled by ESA. Stakeholders commented on the clause, suggesting a number of different approaches. I will ask the Department to explain the clause and comment on each stakeholder comment. The Governing Bodies Association (GBA) suggested an amendment that was designated to retain the autonomy of some boards of governors in respect of the payment of salaries. The amendment removes the requirement for boards of governors of voluntary grammar schools to agree payment arrangements with ESA and to add a separate schedule setting out payment arrangements. I ask the Department to comment.
3143. **Mr Stewart:** You have summarised the effect of the clause very neatly. The provision is intended to make good a policy commitment that the Minister gave, which was that we would maximise the autonomy of schools and, wherever possible, not interfere or change any functions that are currently carried out by schools. It is the case that voluntary grammar schools and grant-maintained integrated schools run their own payroll systems. We think that it would be more efficient and more effective if they were to opt in to central payment arrangements currently operated by the Department, which, in future, will be operated by ESA. However, the Minister gave a policy commitment that we would not force schools to do so. Therefore, the clause allows for schools that

- currently run their own payment systems to continue to do so.
3144. One of the things that has irked the voluntary grammar schools is the requirement for an agreement with ESA to do that. That is there simply for the technical reason that ESA is the employer and, therefore, in running a payroll system, a school is doing so on behalf of ESA. Therefore, there needs to be a formal agreement between the board of governors and ESA to do that. We see no difficulty whatsoever in such an agreement. That is the Minister's policy. ESA will be directed, if necessary, to reach such agreements with boards of governors. Those agreements will simply be the formal recording of the arrangement that is currently in place, and that will continue to be in place.
3145. We think that the first of the amendments, which, I think, was proposed by the voluntary grammar schools, is unnecessary. It is also technically flawed to a significant degree. It suggests:
- "The Board of Governors of a voluntary grammar school may, upon notice given to ESA issue payment in accordance".*
3146. That, unfortunately, would require each voluntary grammar school to give ESA notice, each month, that it was going to make some payments. We do not think that that is a terribly practical arrangement. It would be much simpler to have one page of A4 on which the board of governors agrees with ESA that it will continue to run its own payroll system. It can then do so, unencumbered by interference from any source.
3147. There are other proposed amendments that suggest that we absolutely should not allow —
3148. **The Deputy Chairperson:** Chris, I will go through those, if everyone else is happy that I move on. The Association of Teachers and Lecturers (ATL), the Western Education and Library Board (WELB) and the Northern Ireland Public Service Alliance (NIPSA) suggested amendment b, which is designed to prevent schools, other than voluntary grammars and grant-maintained integrated schools, developing their own salary payment arrangements independent of ESA.
3149. The National Association of Head Teachers (NAHT) and the Association of Controlled Grammar Schools (ACGS) suggested amendments c and d respectively, which are designed to allow all schools, not just voluntary grammars and grant-maintained integrated schools, to develop their own salary payment arrangements independent of ESA. Amendment e from NIPSA and amendment f from David Stewart would do away with the independent salary arrangements that are currently in place in the voluntary grammars and grant-maintained integrated schools. Those amendments would make ESA solely responsible for salary payments in all grant-aided schools.
3150. Chris, can you comment on those, please?
3151. **Mr Stewart:** Certainly, Chair. As members will see, there are a number of amendments, some of which are diametrically opposed in their effect. Our starting point, of course, is the Minister's and the Executive's policy position, which is that those schools that already run payroll systems should be able to continue to do so or to opt in to the central system, if they wish. However, there is no policy intention to extend that to other schools. Therefore, there is no opt-out proposed for the current set of arrangements. The amendment that would prevent an opt-out is unnecessary. The clause does not provide for that. It is already limited to those schools that already run their own payroll systems. Equally, the amendments that effectively propose doing away with the clause, would be contrary to the Minister's policy. It is his policy to allow schools to continue to operate their own systems.
3152. I move now to the amendment that would open that up to all schools and introduce a more general opt-out. Again, that is contrary to the Minister's policy position. We do not think that that would

- be a sensible or feasible approach. I will illustrate that for members. The teachers' payroll system that is currently operated in the Department is for around 1,000 schools, so it is for most schools. It is operated by around 75 staff. We think that there is room for efficiency gains there. The payroll system could probably be run by fewer staff. If we were to allow an opt-out for all schools, that would be 75 staff spread out across 1,000 schools to run payroll systems. If I have done the maths correctly, that is 0.075 of a member of staff, potentially, for each school. Of course, those staff would have to follow that function. They would have to be TUPE-transferred out to the school. We do not think that many, if any, schools could run an effective and efficient payroll system on 0.075 of a member of staff, so we think that the centralised system is going to be much more efficient and much more effective. There is still room for more improvement, and we would encourage as many schools as possible to opt in to it, but those that wish to remain outside are free to do so. However, it is not the Minister's policy to allow any other schools to opt out.
3153. **The Deputy Chairperson:** Should voluntary grammar and grant-maintained integrated schools continue to make their own salary arrangements? Is it a mixed view or do you want to reserve judgement?
3154. **Miss M McIlveen:** I think the issue is much broader than that. I think that we need to reserve our judgement.
3155. **The Deputy Chairperson:** I was expecting that.
3156. **The Committee Clerk:** Is the Committee prepared to indicate a view on any of the possible amendments? If the answer is no, the answer is no. Can members eliminate any of them? If it is a no, that is OK.
3157. **Miss M McIlveen:** I could not do that at this stage.
3158. **The Deputy Chairperson:** I am the same, I am afraid.
3159. **Mr Hazzard:** What was that?
3160. **The Committee Clerk:** If members wish to reserve their position, it would be helpful if they could look at the amendments that are in the table and indicate whether any of them are, clearly, no-brainers, or something that they do not support, do not need or are not interested in.
3161. **Mr Hazzard:** I do not support any of them.
3162. **Mr Lunn:** Chairman, do you want an opinion on them amendment by amendment?
3163. **The Deputy Chairperson:** Yes.
3164. **Mr Lunn:** That is fine.
3165. **The Deputy Chairperson:** Whether it is a yes, a no or an abstention.
3166. What about the suggested amendment from the GBA?
3167. **Mr Lunn:** It is not necessary.
3168. **The Deputy Chairperson:** I want to reserve my judgement on that.
3169. **Mr Hazzard:** It is just the same. We heard GBA's comments about ESA creating more bureaucracy, yet what it suggests will create more bureaucracy every month.
3170. **The Deputy Chairperson:** So you are a no.
3171. **Mr Hazzard:** Yes.
3172. **The Deputy Chairperson:** What about the suggested amendment from the Association of Teachers and Lecturers to prevent schools —
3173. **Mr Lunn:** It is unrealistic. I am a no.
3174. **Ms Boyle:** No.
3175. **The Deputy Chairperson:** I want to reserve my judgement on that one as well.
3176. What about the suggested amendment from the NAHT?
3177. **Mr Lunn:** It is unrealistic. I am a no.
3178. **The Deputy Chairperson:** I also want to reserve my judgement on that one.

3179. **The Committee Clerk:** It has been indicated that a number of members want to reserve their position on every possible amendment to clause 12. I will record that accordingly.
3180. **Mr Lunn:** Is that for all the amendments?
3181. **The Deputy Chairperson:** For all the proposed amendments to clause 12. It may be that we will reach the same position on amendments to other clauses much quicker.
3182. **Miss M McIlveen:** Chairman, I do not think that there is an issue with the amendments that have been proposed. We want to reserve judgement on clause 12 generally.
3183. **The Deputy Chairperson:** OK. I think that that is probably the best way to put it. Thank you.
3184. We will leave the GBA's suggestion that the arrangement requires further protections.
3185. **The Deputy Chairperson:** Clause 13 is titled "Modification of employment law". The clause allows the Department to make regulations to modify employment law relating to employment schemes. We agreed to park the clause pending further information from the Department on the delegation of employment responsibilities. OK?
- Members indicated assent.*
3186. **Mr Lunn:** Have we finished with clause 13?
3187. **The Deputy Chairperson:** Yes. Unless you want to come back in.
3188. **Mr Lunn:** I am surprised that we managed to deal with it that quickly.
3189. **The Deputy Chairperson:** We agreed to park it some weeks ago.
3190. **Mr Lunn:** So it is parked already?
3191. **The Deputy Chairperson:** Yes.
3192. **Mr Craig:** It is in the car park.
3193. **Mr Lunn:** All right.
3194. **The Deputy Chairperson:** Clause 14 is titled "ESA to provide or secure provision of training and advisory and support services for schools".
3195. The clause places a duty on ESA to provide or secure training, and so forth, for boards of governors and staff in grant-aided schools, mostly free of charge. There was also a lot of comment on the clause, and I asked the Department to comment on that.
3196. The sharing education programme (SEP) suggested amendments that were designed to promote shared education by requiring ESA to provide training and support on a shared basis, where possible. The Northern Ireland Voluntary Grammar Schools' Bursars Association (NIVGSBA) sought clarity on whether the training and support would be extended to nursery schools. The NAHT suggested changes that would reallocate the budget for training, and so forth, from ESA to schools.
3197. I ask the Department to comment.
3198. **Mr Stewart:** Thank you, Chair. We think that this is one of the most fundamental clauses in the Bill. It is certainly one of the most fundamental duties that ESA will have. One of its core functions will be to provide or secure the provision of training and support for schools — governors and staff — with very much an increased emphasis on training and support for governors. That is in recognition of the very important role that they play and will continue to play, and of the need to provide better support, advice and training to them as they discharge those functions.
3199. As we have said before, the intention is for what you might term a mixed economy of provision. Unlike education and library boards, ESA will not simply be the monopoly provider of such services. It will provide services and secure their provision by contracting with other providers, but it will also support schools or groups of schools in providing their own services or commissioning or procuring their own services.

3200. So, there is a challenge for ESA. It has to ensure that it is responsive to the needs of its customers, the schools, by providing the services they need. If it is unable to do that, schools will increasingly look to provide those services themselves. If that were to happen, we would see a transfer of budgets from ESA to schools.
3201. The Minister's intention is that we will see an effective, mixed economy of provision on the ground. ESA will, perhaps, provide some core common services that all schools would need, but schools will be able to supplement that by tailoring particular services or support that they and other schools feel could be provided more efficiently, effectively and locally.
3202. **Mr Kinahan:** OK.
3203. **Mr Stewart:** Would you like me to go through the amendments, Chair?
3204. **The Deputy Chairperson:** I will go through them in a second. Are you happy for me to move on within the clause?
3205. **Mr Stewart:** OK.
3206. **The Deputy Chairperson:** The Transferor Representatives' Council (TRC) sought explicit reference in the Bill to the provision of support for religious education (RE). We received information on the Department's current responsibilities in respect of religious education. Members will recall that the duties in respect of RE lie largely with boards of governors. Chris, will you respond to that?
3207. **Mr Stewart:** Certainly, Chair. I may risk Trevor's displeasure again by restating the Department's view that it is unnecessary to pick out support for RE in particular. It is a general requirement to provide support and training for the delivery of the entire curriculum. The Department is not convinced of the need to pick out RE or any other subject for specific reference. Again, to do so could have an unintended consequence. If a court was to look at that, it could conclude that there was some reason for giving RE special treatment over and above other subjects in the curriculum.
3208. **Mr Lunn:** I agree.
3209. **Ms Boyle:** I ask this question, because I do not know. Does the training and advisory support include personal development training for teachers, or is that a matter for schools?
3210. **Mr Stewart:** It is certainly a matter for schools to decide what personal development training is required, but, yes, it would encompass that.
3211. **Ms Boyle:** OK.
3212. **The Deputy Chairperson:** Thank you. Are you happy if I move on?
3213. **Mr Stewart:** OK.
3214. **The Deputy Chairperson:** The Transferor Representatives' Council also sought assurance that ESA would not source training and support from large private providers. St Mary's University College suggested that the clause should explicitly indicate that continuing professional development for teachers should be via Northern Ireland's higher education sector. Members should note that the Committee for Employment and Learning asked about that, and we gave due consideration to that submission. Will the Department respond to that?
3215. **Mr Stewart:** Chair, the Minister does not feel that it would be appropriate to specify in the clause who the providers of training and support might be. Indeed, with reference to some of the amendments, we are not sure whether it would be possible to do that lawfully. I very much doubt whether an attempt to prohibit large suppliers, however they might be defined, from competing for the opportunity to provide services would be lawful. Quite possibly, that could result in some form of indirect discrimination.
3216. Fundamentally, the Minister's policy is that it is not necessary to specify providers in the clause. That should be an operational decision for ESA and, indeed, for schools.
3217. **The Deputy Chairperson:** OK. Thank you.

3218. Members, are we happy with clause 14? Should ESA provide the training and support for school and governors, or should the budget be delegated directly to schools? Are there any comments?
3219. My concern is how this will be forced on governors, because they are all voluntary. A statutory role will come in and that will be linked to inspections. That is where a lot of the concerns came from among the people whom we have talked to.
3220. **Mr Stewart:** Chair, I do not think that the intention will be to force training on anyone. The clause is motivated much more by a concern that is regularly expressed by governors that there is not enough advice, support and training available to them, or that such training that is provided is not what they need. The Minister has absolutely listened to that, and he feels that the provision of a governors' support service is a priority now, even in advance of ESA. That is why he has asked education and library boards to move ahead to set that up in advance of ESA.
3221. **The Deputy Chairperson:** That is absolutely the right way to go, tip-toeing down that line. So, should ESA provide the training and support for schools and governors, or should the budget for that be delegated directly to schools?
3222. **Miss M McIlveen:** I am not convinced why an element of the budget cannot be kept back for schools.
3223. **The Deputy Chairperson:** Yes, that is why both are linked into the same question.
3224. **Mr Stewart:** The policy intention is that ESA would do that. We have not thought it necessary to specify that in the Bill. In order to give effect to the policy intention, ESA would have to do exactly that. It would have to be ready to work with schools to procure on occasion a service on behalf of schools, rather than schools providing it themselves, or support schools in providing procurement and, indeed, paying for the services that the school wishes to secure.
3225. **Miss M McIlveen:** I am not sure that that amount of flexibility is reflected in the clause.
3226. **Mr Stewart:** You are right, Michelle, there is not the specific requirement in the clause to do so. There is not a duty on ESA to set aside a proportion of its budget to pay for things that schools want. However, that certainly is the thinking that underpins the policy intention. But you are right, the clause is not specific in that regard.
3227. **Miss M McIlveen:** I may want to look for a little more flexibility in relation to that.
3228. **The Deputy Chairperson:** Does everyone feel the same way about that?
3229. **Miss M McIlveen:** If that is the policy intention, I am not sure why it cannot then be reflected in the Bill.
3230. **Mr Lunn:** Michelle is starting to sound like me.
3231. **Miss M McIlveen:** Oh dear. That is worrying.
3232. **Mr Lunn:** In terms of the high degree of autonomy that grammar schools will have, there is nothing in the Bill to stop them from accessing their own training and support and advisory services if they want.
3233. **Mr Stewart:** As they currently do. Few, if any, voluntary grammar schools make use of the Curriculum Advisory and Support Service (CASS) provided by education and library boards.
3234. **Mr Lunn:** So, the clause does not need to specify that there is a freedom for them to do that.
3235. **Mr Stewart:** We would not need to specify the freedom to do that. I think that Michelle is making a different point, which is that members may wish to consider whether ESA should be required to hypothecate a proportion of its budget to do that.
3236. **Miss M McIlveen:** It is the budget that we are now concerned about.

3237. **Mr Stewart:** It would be unusual to specify budget decisions in legislation but not technically impossible.
3238. **The Deputy Chairperson:** Could it be written in such a way that it is flexible, or do you think that it is written flexibly enough?
3239. **Mr Stewart:** I am certainly of the view that the clause would provide for that. It would be possible to make it more explicit.
3240. **Miss M McIlveen:** Chris, will you come back with a form of words that may be helpful for us in relation to that?
3241. **Mr Stewart:** I would have to put that to the Minister. If he agrees, then, yes, we could do that.
3242. **The Deputy Chairperson:** Is that a Committee view? Are we all happy with that?
3243. **Mr Lunn:** Could I clarify what the request is? A proportion of ESA's training and advisory support budget should be allocated to whom? Individual schools?
3244. **Miss M McIlveen:** It is to schools to allow them to have the flexibility to procure training that may be relevant to their schools as opposed to taking direct training from ESA.
3245. **Mr Stewart:** If it would be helpful, what I would do first, rather than go straight to the wording of an amendment, is capture the policy intention in words that, if the Minister agrees them, we can bring back to the Committee. Then I can suggest how those may be captured in an amendment.
3246. **The Committee Clerk:** We are asking the Department to come back with the policy intention, and members will take that forward, but there are other issues.
3247. **The Deputy Chairperson:** There are more issues in the clause, I know. OK, so we note where we are on that. Should there be an explicit requirement in the Bill for support for religious education and/or shared resources and networking?
3248. **Mr Lunn:** Surely that is already in the general provisions.
3249. **The Deputy Chairperson:** It is already there. So, that is a no.
3250. **Mr Stewart:** On that latter point, some of the suggested amendments that mention sharing or collaboration are deeply technically flawed. There is no definition of those terms. There is a very odd use of the phrase "where applicable", which is not defined in any way. If you see in a clause, "in relation to schools to which this clause applies", somewhere else in the clause or the Bill you will see a precise definition or explanation of that. Simply leaving the words "where applicable" hanging in the midst of an amendment would do great damage to the Bill.
3251. **The Deputy Chairperson:** It did make me think about whether there would be any chance of having an interim report from the shared education body that was set up, because it is going to report after we have gone through the Bill.
3252. **Mr Stewart:** It is in the process of finalising the report as we speak, but it may be another week or more before the Minister receives it.
3253. **The Deputy Chairperson:** So, we could get something before we get through the Bill?
3254. **The Committee Clerk:** I am not sure that the Department is promising to do that.
3255. **The Deputy Chairperson:** Can we ask for that?
3256. **Mr Stewart:** That would depend on the timescale of the advisory group. It may be as little as a week or it may be as long as two weeks before we see the final report. Thereafter, the handling is a matter for the Minister. I would have to take his view on it.
3257. **The Deputy Chairperson:** Would the Committee be happy if we ask?
3258. **Mr Hazzard:** It would do not harm to ask, if you want to ask.

3259. **The Deputy Chairperson:** OK. As far as religious education is concerned, it was a no.
3260. Should there be controls on the use of private sector suppliers or services? Should there be an explicit reference to higher education for teachers continuing professional development?
3261. **Mr Lunn:** I am not quite sure where the transferors want to go with that. I have a lot of sympathy for some of the things that they say, but what is a large private supplier, and why would they want to disadvantage them in terms of tendering for training.
3262. **The Deputy Chairperson:** The indication is that we cannot legally go for it.
3263. **Mr Stewart:** I will not claim to offer definitive legal advice to the Committee, but my experience suggests to me that such a provision is quite likely to be unlawful.
3264. **The Deputy Chairperson:** OK. So are we happy to put it down as a no from everyone?
- Members indicated assent.*
3265. **The Deputy Chairperson:** We will move on to clause 15:
- “ESA to provide library services to grant-aided schools and other educational establishments”.*
3266. In line with departmental arrangements, the clause requires ESA to provide library services to grant-aided schools and other educational establishments. A stakeholder sought clarity as to what educational establishments, other than schools, will receive library services. Again, I will ask the Department to respond to that and to explain the clause and the provision of library services by ESA.
3267. **Mr Stewart:** Thank you, Deputy Chair. I hope that this will be one of the more straightforward clauses. It is quite simply a continuity measure. It is to ensure that ESA will continue to provide what is usually known as the schools library service, just as education and library boards currently do. It stems from the time of the Libraries Act (Northern Ireland) 2008 and the establishment of the Northern Ireland Library Authority, when the policy decision was taken that the schools library service would nevertheless remain within the education field and not transfer out of that. Hence, this clause.
3268. The requirement is for ESA to provide that service to grant-aided schools and all other educational establishments that it grant-aids. So, in answer to the question, it needs to do exactly what it says on the tin. If ESA grant-aids an educational establishment, it should make available to it the schools library service in respect of whatever that means. These days it means much more than simply providing books. It is providing books and opportunities to access computer-based information — not assessment, I hasten to add — and other online services.
3269. **Mr Lunn:** Is there an example of an educational establishment other than a school?
3270. **Mr Stewart:** A youth club or an early years provider.
3271. **The Deputy Chairperson:** Are members content with clause 15 as drafted?
- Members indicated assent.*
3272. **The Deputy Chairperson:** Clause 16 places a duty on ESA to secure provision of educational and youth services and facilities. The clause places a duty on ESA to provide adequate facilities for educational and youth services. The clause allows ESA to organise activities or make grants available, etc, in support of that. Additionally, the clause permits ESA to make by-laws in respect of those facilities. This clause drew some comment. The SEP suggested an amendment, which, like a number of the other amendments, was designed to promote sharing and collaboration. It would require ESA to develop facilities for educational and youth services on a shared and collaborative basis. I hand over to the representatives from the Department again.

3273. **Mr Stewart:** Thank you. It is probably best if members see this particular clause as the companion to clause 2(2)(b), which members have parked. Clause 2(2)(b) includes the general duty on ESA to secure provision of educational and youth services. So, this is the companion piece to ensure that there are adequate facilities provided or secured for those services. Again, I remind members that one might describe “educational services” as shorthand for early years. The definition in the Bill is a little bit broader than that, but, generally, that is what we mean by “educational services”. So, it contains the duty to ensure adequate facilities for youth services and early years services, and there are a range of powers there for ESA to perform that function, whether it is through establishing facilities itself, grant-aiding the provision of facilities by others and organising or otherwise supporting provision. So, there is a full range of tools in the box to ensure that ESA can carry out and satisfy that duty.
3274. **The Deputy Chairperson:** Moving on, NIPSA suggested changes that were designed to prevent ESA entering into public-private partnership through a private finance initiative in order to secure new facilities. Is there any comment from the Department on that?
3275. **Mr Stewart:** We understand NIPSA’s view, but the Minister does not share it.
3276. **The Deputy Chairperson:** The NAHT sought to remove the powers that would allow ESA to develop and enforce by-laws. It was felt that the enforcement of such by-laws would place unwelcome additional responsibilities on school leaders.
3277. **Mr Stewart:** That is one where, if the Committee set its face against the provisions, the Minister would not be hugely concerned and might well be minded to go along with the Committee. Again, it is simply a continuity measure. There are similar provisions in the 1986 Order for education and library boards, and we are simply carrying them forward. In relation to the NAHT concern, it would have no effect whatsoever on school leaders because the by-laws sit within this clause for a reason — so that they relate to the duty to provide facilities for youth services and early years. The emphasis is on youth services. I do not think anyone would envisage a need for by-laws to regulate the conduct of preschool children. That would hardly be a priority for ESA, so the emphasis is very much on youth services.
3278. **Mr Lunn:** Are you saying that the provisions are already in the 1986 Order, so it would not matter if clauses 5(a), 5(b) and 5(c) were not there?
3279. **Mr Stewart:** They are in the 1986 Order, but they would be repealed if this clause went ahead. An alternative would be to simply leave the provision in the 1986 Order and amend that to point it towards ESA rather than education and library boards. The effect would be the same.
3280. **Mr Lunn:** The only difference is that the provisions are for ESA instead of education and library boards?
3281. **Mr Stewart:** Yes.
3282. **Mr Lunn:** I will ask this obvious question: why is it there?
3283. **Mr Stewart:** Simply as a continuity measure. In developing the policy and the Bill, we sought to carry over all of the functions of education and library boards, Council for Catholic Maintained Schools (CCMS) and the Youth Council, changing them where necessary but adding them to the functions of ESA. If the Assembly were to decide not to proceed with this provision, it would not fatally undermine the Bill.
3284. **Mr Lunn:** Somewhere in the back of the Bill, there must be a clatter of technical amendments where “board” is changed to “ESA”. I am sorry, but this is a constant argument that I seem to be having. Sometimes, things are carried forward and sometimes they are not. This seems to have been carried forward in a way that could have been dealt with by the stroke of a pen.

3285. **Mr Stewart:** It could have been, if all that was required was that all references to “education and library board” be changed to “ESA”. By and large, where that is all that is required, the draftsman’s advice has been to do that by technical amendment. However, where a provision needs a bit more work than that, eventually it reaches a tipping point. That is always judged on the foot of the draftsman’s technical advice: there is not really a policy reason for it. However, if he feels that it is reaching a tipping point where you are almost changing as many, if not more, words than you are leaving alone, his advice invariably is that it is best to repeal the clause or the provision completely and set it out afresh in a new clause.
3286. The Holy Grail that all of us aspire to is a complete consolidation of all of the primary legislation, so that there is simply one education Act, where you capture all of the primary provisions. Maybe, someone who comes after Peter and I will be able to achieve that, but I am afraid it is beyond our scope for the present.
3287. **Mr Lunn:** I am glad to see them adopting this approach. If they are taking the opportunity to modernise it slightly, or to bring it up to date, that is fine; that is good.
3288. **The Deputy Chairperson:** What do we think about clause 16? Should ESA be required to provide facilities and activities connected to the educational and youth services? Do we believe that the Bill should require ESA to provide facilities, etc, on a shared basis?
3289. **Mr Stewart:** The Department’s view is that the suggestion is premature, given that the Minister has not had an opportunity to receive the report from the ministerial advisory group, and the amendments suggested are technically flawed.
3290. **The Deputy Chairperson:** I got that. So, it is a no, at the moment. What is the Committee’s view? Are you happy with that?
3291. **The Committee Clerk:** There are a number of amendments around SEP. Is it the Committee’s general position that it will not support those amendments? Or, is it not able to say?
3292. **The Deputy Chairperson:** I would rather see if we can find out more about the future of shared education. The view is mixed.
3293. **Mr Hazzard:** Even if we receive an interim report from the shared group, there will be no final policy decisions taken around it or on shared education until, at least, the summer.
3294. **The Deputy Chairperson:** It might brief us as to whether we want to put amendments in.
3295. **Mr Hazzard:** We might have an idea in our heads of what shared education is — I do not want to speak on behalf of the Department — but that is not going to make a difference to the definition of shared education in the Bill, or is it?
3296. **The Deputy Chairperson:** I would rather hold my judgement on it.
3297. **Mr Stewart:** As the Minister has set out, he is eagerly awaiting the report of the advisory group. He has said on a number of occasions that he sees the need to take that report and promote a debate across civic society on the appetite for sharing, the particular approach to sharing and the forms of sharing that might be pursued. He has not at any stage ruled out amendments to this Bill on the foot of the report. However, I get a strong impression, from the way in which he has described his policy position, that he thinks that if there is a need for legislation for shared education, it would come in a different legislative vehicle. It would not come in this Bill.
3298. **The Deputy Chairperson:** Are we happy with the clause?
3299. **The Committee Clerk:** I asked members about the number of amendments from the SEP and a few others about sharing. What is the Committee’s general view on that? Does it accept the Department’s

- comments that, because there is no policy definition of what shared education is, these things should not be in the Bill? Or, does the Committee take another view? Or, is it reserving its position?
3300. **The Deputy Chairperson:** What did we say at the beginning around clause 1?
3301. **The Committee Clerk:** It was just about the name.
3302. **The Deputy Chairperson:** I thought we had parked the definition of “shared”. Or, did we merely say no? I am happy.
3303. **Miss M McIlveen:** We are clear on the clause, as is drafted.
3304. **The Deputy Chairperson:** Exactly, we are happy with it as drafted.
3305. **The Committee Clerk:** But there is the general point about shared education. There are multiple amendments. Can the Committee set out a position? Do you want to support those? Or, do you want to take them as they come in each of the clauses?
3306. **Miss M McIlveen:** I think that we will need to take them as they come, but we are also waiting for further information. I do not think that we can make a decision without that.
3307. **The Committee Clerk:** Thanks to the member for making that clear. The Department has said that it does not expect there to be a policy definition in the immediate term, but the member has made her position clear.
3308. **Mr Stewart:** I think that it would be deeply hazardous to attempt an amendment dealing with those sorts of matters, without a precise definition of shared education and such words as “collaboration”, albeit the Committee might decide on one. I will illustrate the hazards of attempting to do so. The effect of amendment (a) in the table would be that ESA would be required to share or co-operate with some unnamed party, which is clearly not the intention. I think that the intention is for providers of youth services and early years services to share and collaborate, but that is not the effect of the amendment that is proposed.
3309. **Mr Lunn:** Were we to accept that, or if something were to come forward to define “shared education” adequately, another wrinkle may come in the form of a further challenge that I am sure would be brought by the integrated sector — and prompted by me, I would think. *[Laughter.]*
3310. **Mr Hazzard:** Trevor’s point is a fair one. You feel that a bigger debate is coming on shared and integrated education, and this sort of precludes that.
3311. **The Deputy Chairperson:** OK. Are members content with clause 16 as drafted?
Members indicated assent.
3312. **The Deputy Chairperson:** Clause 17 is entitled:
“ESA to pay capital grants to voluntary and grant-maintained integrated schools”,
3313. and it transfers the Department’s powers to pay capital grants to voluntary and grant-maintained integrated schools to ESA. Stakeholders did not comment on the clause. Will the Department explain it?
3314. **Mr Stewart:** Certainly. Again, clause 17 is a fairly straightforward in its effect. The Department has existing powers to pay capital grants in respect of voluntary schools and grant-maintained integrated schools, and the clause transfers those functions and the relevant provisions from the Department to ESA. So it is a straightforward transfer of function.
3315. **The Deputy Chairperson:** OK. What do members think about clause 17? Should ESA take on the role from the Department of paying grants to voluntary and GMI schools? If there is consensus, will you indicate that you are content with clause 17 as drafted?
Members indicated assent.
3316. **The Deputy Chairperson:** Clause 18 gives ESA the power to establish controlled schools — nursery, primary,

- secondary or special schools. ESA will also be able to establish nursery classes in controlled schools that are not nursery schools. Stakeholders commented on this clause. NICIE sought clarification of the mechanism to be used by ESA to open new grant-maintained integrated schools, and it called for an amendment to allow new integrated schools to be opened. The TRC suggested an amendment that would require consultation with a relevant sectoral body before establishing a controlled school. The Department will explain the clause and to comment.
3317. **Mr Stewart:** This, again, is a continuity measure or transfer of function. Education and library boards are today responsible for establishing new controlled schools. That responsibility will transfer to ESA. This is an example of a clause that required re-enactment in the Bill to set it out clearly. However, the core purpose of the clause is simply to transfer the functions. I am afraid that I may again incur Trevor's wrath here, but the integrated sector's concern is allayed in a provision that already exists in legislation, and there is not a need to re-enact it. The power to establish a new controlled integrated school will remain in article 92 of the 1989 order, and it required a fairly simple amendment to transfer that power from education and library boards to ESA. The OLC did not feel that there was a need to re-enact that.
3318. The Minister is open-minded on the suggested amendment that ESA should consult with the relevant sectoral body. He would very much welcome the opportunity to consider the Committee's view on that. He can see a strong argument for a need to consult the relevant sectoral body before the establishment of any new school and not just controlled schools.
3319. **The Deputy Chairperson:** Thank you very much. What do members think about clause 18? Are we content for ESA to have the power to open controlled schools?
3320. **Mr Lunn:** Sorry, Chair, are you on the NICIE amendment yet? That would be a kind of reserved position.
3321. **The Deputy Chairperson:** OK; so you want to —
3322. **Mr Lunn:** I do not need to say it all over again, but I will. What is the difference between the requirement and non-requirement to re-enact article 92 of the 1989 order? There is no need to re-enact under clause 18, but under clause 17 it is a straightforward transfer to ESA of the authority to pay capital grants.
3323. **Mr Stewart:** Those are matters on which we are in the hands of first legislative counsel. We are guided by his advice on when it is best to simply amend a provision in situ and when it makes more sense to repeal it and re-enact. It is a matter of technical drafting, and we see his expertise as the deciding factor.
3324. **Mr Lunn:** The Departmental response says that the power will transfer to ESA. Is that on the back of the Bill?
3325. **Mr Stewart:** It will be in schedule 7.
3326. **The Deputy Chairperson:** Are we content that ESA has the power to open controlled schools?
Members indicated assent.
3327. **Mr Hazzard:** See the TRC's suggested amendment that ESA "may, in consultation"? Is there a definition anywhere of "consultation" and what it at least has to be? Do you have any concerns that some might say that they were not consulted enough?
3328. **Mr Stewart:** The Minister has indicated that he has an open mind in relation to the thrust of the amendment, but if he or the Committee decided to proceed with it we would offer advice on how it might be constructed. I think we would construct it differently. We would not use a formulation like "may, in consultation with", because that is not clearly enough defined. It would be much more likely to be couched in terms of a requirement on ESA, before establishing a controlled school, to consult the relevant sectoral body. That is much more clearly

- understood. The role of ESA there would be fairly clear.
3329. **The Deputy Chairperson:** When we get to the other end of that, how do we define a “relevant sectoral body”? Would it have to be a recognised one?
3330. **Mr Stewart:** “Relevant sectoral body” actually is defined in clause 63. It is a defined as a body that appears to the Department to represent schools of a particular description. In this case, given that the Minister is absolutely committed to the establishment of a sectoral body for controlled schools, I think the choice will be fairly clear. The requirement would simply be that, if ESA had a proposal to establish a new controlled school, before doing anything with that proposal it would consult the sectoral body.
3331. **The Deputy Chairperson:** I was thinking more of voluntary grammars, because there is a debate as to whether he recognises them.
3332. **Mr Stewart:** There is an issue there. If the suggested amendment was to be applied more generally to any type of school then the caveat to that would be “if there is a relevant sectoral body”.
3333. **The Deputy Chairperson:** Should this require consultation with the relevant sectoral body in respect of schools generally? Are we all agreed on that?
3334. **Mr Lunn:** Are we agreeing that, in principle, we think there is some merit in the TRC’s amendment? Is that what we are saying?
3335. **The Deputy Chairperson:** That is what I am asking. Are you?
3336. **Mr Lunn:** Yes.
Members indicated assent.
3337. **The Deputy Chairperson:** Is an amendment required in respect of integrated schools?
3338. **Mr Lunn:** Of course it is.
3339. **The Deputy Chairperson:** You are reserving your position? OK. What is everyone else doing? Are you all happy?
- Is an amendment required in respect of integrated schools? It is amendment C — the NICIE amendment.
3340. **Mr Lunn:** I do not doubt that it is already provided for in existing legislation, but it is not very clear. It would be a good opportunity for their mechanism if such a thing could be drafted or provided. It is kind of a reserved position again.
3341. **Miss M McIlveen:** I am not sure that it is necessary.
3342. **The Deputy Chairperson:** We are content with clause 18 as drafted or we wish to amend it. We are happy with the answers on that.
3343. **The Committee Clerk:** Yes, the Committee is reserving its position on the amendments, so we cannot answer the question.
3344. **Mr Danny Kinahan:** Clause 19 deals with the responsibilities of ESA in relation to controlled schools. This clause makes ESA responsible for maintenance of school premises, providing and replacing equipment, employing all staff and meeting the cost of all such things as may be necessary for the carrying on of a controlled school. The Sharing Education Partnership put forward an amendment, like a few others, which is designed to promote collaborative partnerships by requiring ESA to encourage partnerships between schools of all types. Has the Department anything to add in respect of that clause and the proposed amendment? In particular, would the clause prevent controlled schools from undertaking their own procurement, etc, independently of ESA?
3345. **Mr Stewart:** I think perhaps that latter point is maybe more in clause 20, is it?
3346. **Mr Kinahan:** We can answer —
3347. **Mr Stewart:** Clause 19 is important, and it marks out one of the major changes brought by the Bill, which is a very different position for controlled schools, and a very different relationship with ESA to what they currently have with education and library boards.

3348. The responsibilities of ESA are set out there. If there is a ring of familiarity about them to members, that is because they are very similar to the responsibilities that an education and library board currently has, and ESA will have in due course, in relation to maintained schools. In fact, they are almost identical. Again, that is to give effect to the Minister's policy intention, which is that in every respect, other than ownership of the land and buildings, the relationship between ESA and a controlled school will be the same as the relationship between ESA and a maintained school. Hence, it is necessary that that relationship be captured in a provision that sets out clearly the duties that ESA will have. That is the purpose of clause 19.
3349. As to the proposed amendment, in addition to what I might term, if it is not being disrespectful, "the usual problems" with that type of amendment, there is another one, which is that, quite simply, it seems utterly unconnected with the purpose of the clause.
3350. **Mr Lunn:** Clause 19(c) reads:
"ESA is responsible for ... employing, in accordance with section 3, all teachers and other staff".
3351. We have not exactly nailed down clause 3, because we have not been able to discuss it because we are waiting for advice from another quarter. This is in relation purely to controlled schools, and perhaps the argument about clause 3 will centre more on the voluntary grammars, but there is a tide of opinion coming from the controlled schools that some of them would like to have more control of their own employment affairs. So, I am not quite sure how we can agree clause 19 without further discussion on a couple of other clauses.
3352. **The Deputy Chairperson:** Do you want to withhold —
3353. **Mr Lunn:** I think that we would be wise to do so. It is not just my personal view.
3354. **The Deputy Chairperson:** I agree with you.
3355. Does clause 19 mean that every single little thing that they have to buy will have to go through the Department, whether it is a light bulb, a new lock for a door or —
3356. **Mr Stewart:** No, absolutely not. Neither this clause nor clause 20 has that effect on procurement. In relation to capital procurement, we would certainly strongly encourage all schools to do that through ESA, which will be the centre of procurement expertise and have a full range of professional staff with the expertise to do that. In relation to the procurement of other goods and services, equipment, etc, there will be no requirement on any school to procure through ESA. Again, we might encourage schools to look carefully at doing so but if a school, whether controlled or otherwise, feels that it has the expertise within the school to procure, it is free to do so.
3357. **Mr Lunn:** Could Chris comment on clause 19(c) and the employment situation?
3358. **Mr Stewart:** You are absolutely right, Trevor, in that, because this clause is explicitly linked to clause 3 and joins controlled schools to the employment arrangements in clause 3, if the Committee has not yet agreed on its position in relation to clause 3, then yes, it would be unusual, I suppose, to agree clause 19 until it had settled that.
3359. **Mr Kinahan:** Is the Committee content with clause 19 as drafted, or does it wish to amend it or reserve?
3360. **Mr Lunn:** We have to reserve.
3361. **Mr Kinahan:** Are Members happy to reserve?
Members indicated assent.
3362. **Mr Kinahan:** Let us move to clause 20,
"ESA to contract for certain works".
3363. This clause gives ESA the power to enter into contracts for the provision of alterations to school premises. The contract may be public-private partnership (PPP) or traditional

- procurement where the contract is between ESA and the contractor, or maybe between ESA and the trustees of a board of governors of a voluntary or grant-maintained integrated school. There was some commentary from GBA and Inst. They suggested amendments that would limit, or disapply in some cases, ESA's authority to enter into contracts relating to premises in voluntary or grant-maintained integrated schools. Again, I will ask the Department to comment.
3364. **Mr Stewart:** The purpose of the clause is to provide ESA with the core function of procuring capital development and entering into the necessary contracts. It is permissive. A lot of the concerns that were put to the Committee were based on the interpretation that this somehow gave ESA the power to enter into capital development without the agreement or permission of a school. That is absolutely not the case; nor do we think that that would be possible in practice. It would, in theory, be possible for ESA to enter into a contract with a builder to carry out works on a particular school. However, if it did not have the permission or agreement of the school, when the poor builder turned up to begin digging the foundations, they would simply be turned away at the gates of the school because ESA will not own voluntary schools and cannot compel any voluntary school to accept or undertake any capital development that it did not wish to.
3365. We did not, and still do not, feel that it is necessary to specifically rule that out in legislation. It stems directly from the ownership of the schools and the premises by their trustees or boards of governors. The clause is purely permissive; it is to give ESA the power to enter into those contracts. It does not give ESA a monopoly, and it is not the Minister's intention that schools will be compelled to procure capital development through ESA. If they wish to procure capital development themselves, they will be free to do so, provided that they can convince ESA and the Department that they have the wherewithal and expertise to do so.
3366. **The Deputy Chairperson:** Would it not be better to put "with permission" or to reword it?
3367. **Mr Stewart:** It would be technically possible to do that. I suspect that, if we sought that, legislative counsel would advise me that it would be unnecessary because nothing in the clause affects in any way the rights of landowners. It would be technically possible to include something to give effect to the amendment suggested, although perhaps not those particular words.
3368. **Mr Lunn:** This is not directly related, but on the RBAI suggested amendment concerning voluntary category B schools, those two schools are in a unique position. Are they precluded from asking the Department to contribute to capital expenditure?
3369. **Mr Stewart:** No.
3370. **Mr Lunn:** So they could, at some time, if they wanted to, because they thought that they were overstressing themselves, actually come to the Department or ESA for —
3371. **Mr Stewart:** They could. As the law presently stands, that would have another effect that might strike you as unusual. There is a link between the percentage of capital grant that is provided and the composition of school boards of governors. In essence, every voluntary school except the two category B schools entered into agreements with the Department. In return for access to capital funding, they gave to the Department the right to nominate a certain proportion of their boards of governors. If the two category B schools wanted access to capital grant, they would have to enter into such an agreement with the Department, which would make a slight change to the composition of their boards of governors.
3372. **Mr Lunn:** They would stop being category B, would they not?

3373. **Mr Stewart:** They would stop being category B.
3374. **The Deputy Chairperson:** Are we content to allow ESA to have the power to enter into contracts for the alteration of school premises? Does ESA need that power? Does the clause permit ESA to undertake works on premises that are vested in ESA or not without the agreement of the relevant board of governors? We have heard the opinion. Members, do you want to indicate whether we are content with clause 20 as drafted? Do we want to get it amended?
3375. **Mr Lunn:** Content.
3376. **Mr Hazzard:** Content.
3377. **The Deputy Chairperson:** I feel that it should be amended.
3378. **Mr Stewart:** The Department is slightly bemused by the notion that schools would be concerned that ESA might march in and build a new school against someone's wishes. It is not usually what we get criticised for.
3379. **Mr Lunn:** Command and control.
3380. **The Deputy Chairperson:** I understand that.
3381. **Mr Stewart:** It is more usually letters about the lack of new schools that the Minister receives in his postbag.
3382. **Miss M McIlveen:** I am curious as to how you think that it should be amended, Chair.
3383. **The Deputy Chairperson:** I do not know. I need to go away and have a think. I just know that it is the protection they want. I know exactly what Chris has said — that it cannot do it.
3384. **Miss M McIlveen:** Is it particularly around voluntary grammars?
3385. **Mr Stewart:** It would actually be the case in relation to all schools other than controlled schools. In theory, ESA, as the owner of controlled schools, could go against the wishes of the board of governors and build a new school, but I think that that would be an unusual situation. It absolutely could not, however, do that for any other school, quite simply because it would not own the land and premises.
3386. **The Deputy Chairperson:** So you are happy with it? We will reserve it. Yes, yes. I want to reserve as well.
3387. Clause 21 provides for ESA to pay superannuation benefits to teachers. The clause transfers the responsibility for the payment of teachers' pension benefits from the Department to ESA. Stakeholders did not comment on the clause. Again, I ask the Department to comment.
3388. **Mr Stewart:** Thank you, Chair. Again, this is one of the more straightforward clauses in the Bill: a very straightforward transfer of functions. The function of paying teachers' pensions currently rests with the Department. This is one of a group of operational functions that we feel would sit better with ESA than the Department, and the clause simply allows for that.
3389. **The Deputy Chairperson:** OK. Thank you. So, should ESA take over responsibility from the Department for the payment of teachers' pension benefits? Will Members indicate that they are content with clause 21 as drafted?
- Members indicated assent.*
3390. **Mr Stewart:** On foot of that clause, if it is included in the Bill, there would, of course, be a small piece of subordinate legislation to make provision for that. When Peter is finished modifying employment law, that is what he will be working on. We will bring that to the Committee in due course.
3391. **The Deputy Chairperson:** OK. Thank you.
3392. Clause 22 deals with the ancillary powers of ESA. The clause allows ESA, subject to other statutory provision, to do anything that appears to it to be conducive or incidental to the discharge of its functions. There was some commentary. ASCL wanted amendments to limit the authority that ESA has

to undertake “anything” in order to protect the autonomy of schools. INTO suggested a change to the clause so as to limit delegation to schools and prevent the development of free schools or academy schools. NICIE suggested amendments that would add further definition to ESA’s additional powers. Again, I ask the Department to comment.

3393. **Mr Stewart:** The volume of commentary on this and the extent of the concerns expressed really did surprise us in the Department. This is a very standard clause, and it is one that Members will see in, I think, any Bill that comes before you to establish a new non-departmental body. It simply gives ESA a number of additional tools to allow it to discharge the main functions that are provided for elsewhere in the Bill.
3394. For example, if you look in the Libraries Act (Northern Ireland) 2008, you will see, almost word for word, a very similar power for the Library Authority. If you even look in the Charities Act (Northern Ireland) 2008, you will find that the Charity Commission has a very similar set of powers. It is worth mentioning, in passing, that it is quite likely that all schools will have to be registered as charities with the Charity Commission. The Charity Commission will have much more significant powers to intervene in the running of schools than those proposed for ESA, but I mention that just in passing.
3395. This is not the secret clause that some stakeholders fear it is that allows ESA to march in and take over schools. It is the clause that allows ESA to, for example, enter into agreements to order its own stationery, or enter into agreements with some provider to run the staff canteen at headquarters, or perhaps to take out a lease on headquarters premises somewhere, or to carry out or commission some research to better inform the discharge of its function — those sorts of things.
3396. The limitations in the clause, I think, are very important. Many people who read it focus on the words “may do

anything” and get rather concerned by that. However, I think that the words on either side of “may do anything” are very important. There is an important limitation at the beginning of the clause where it says:

“Except as otherwise provided by any statutory provision”.

3397. What that means is that ESA cannot simply use this as permission to do anything it wants. It cannot take onto itself functions that are assigned elsewhere in law. The function of managing schools, for example, is provided for elsewhere in statutory provision. The management of schools is for boards of governors: it is not for ESA. So, that clause does not permit ESA to intervene in the management of schools.
3398. The words after, “may do anything” are equally important:
- “may do anything that appears to it to be conducive or incidental to the discharge of its functions.”*
3399. So, it is something that is added on to a function that is provided for elsewhere in the Bill. It does not allow ESA to create new functions for itself. That is a decision for the Assembly to take in primary legislation, not for ESA.
3400. **Miss M McIlveen:** In relation to the comments that you made, Chris, on the Charity Commission, is it possible for you to give us a written briefing on the possible impacts of that?
3401. **Mr Stewart:** Certainly, Michelle; happy to do that. In terms of timing, we are actually due to meet the Charity Commission next week, I think, to explore that very thing; to see what the implications are of the full commencement of the Charities Act (Northern Ireland) 2008. At this stage, we think that it is likely that all schools will have to be registered as charities with the commission. We will need to explore with the commission just what the implications of that are. They are likely to be in two particular areas. There will, probably, be a particular accounting

- regime and requirements that will apply to schools, which they will have to follow. It is probably less onerous than the accounting regime that applies to limited companies. So, it is not necessarily bad news for schools in that regard. However, there are also requirements in charities legislation around the group of people who would be known as the trustees of a charity, who are, in respect of a school, the board of governors. So that has potential implications. We need to explore with the commission exactly how schools will be affected by that. They are considerably more significant than any of the powers in the Education Bill.
3402. **Miss M McIlveen:** I understand what you are saying. However, it does not mean that those organisations should not be concerned about the Education Bill as well.
3403. **Mr Stewart:** Absolutely. However, they should be much more frightened of the 2008 Act.
3404. **Miss M McIlveen:** That might be the case. However, that is not to underestimate their concerns in relation to this, either. It would be useful for us to have a paper on the impact of the 2008 Act in respect of schools.
3405. **Mr Stewart:** Certainly. It might be a week or two before we can provide it. However, we will be happy to do so.
3406. **Miss M McIlveen:** It is my understanding that some schools may be exempt from that. Obviously, that may have changed.
3407. **Mr Stewart:** We think not at this stage. However, we need to take advice from the Charity Commission on that. My reading of the legislation is that it will apply to all schools. That is the initial view of the Charity Commission. A number of schools, particularly voluntary grammar schools, tend to be registered as charities already for tax purposes. Perhaps one of the ironies of this is that they might see the least difference out of all of it. The schools that might see most difference are controlled schools.
3408. **The Deputy Chairperson:** You gave two examples, one being the 2008 Act, of where those clauses are normal. Are there any amendments or examples in the opposite direction of which you are aware?
3409. **Mr Stewart:** Not that I am aware of, Chair. I have to say candidly that they do not usually strike fear into the hearts of stakeholders in the way in which they have done on this occasion. They would usually be seen simply as mechanistic clauses that would be included in any Bill to allow for some rather mundane functions to be discharged by a particular body.
3410. **The Deputy Chairperson:** OK. I am going to move on to another part of the schools' —
3411. **Mr Lunn:** I just want to ask Chris about NICIE's proposed amendment.
3412. **The Deputy Chairperson:** I was just coming onto that. NICIE's amendment B would alter the clause to specify that ESA would have the power to encourage co-operative educational endeavours, including interfaith and multidimensional schools. Amendment C also alters the clause to allow ESA to assist boards of governors to convert their schools to interdenominational or interfaith schools in compliance with the procedure that is set out in the GB Academies Act 2010. Again, can you comment?
3413. **Mr Stewart:** Those are lofty and ambitious policy aims that the stakeholders have set out, Chairman. Again, I think that they would be premature in terms of the Minister's consideration of the policy position. Perhaps the clause that allows ESA to buy its stationery would not be the right place in the Bill to include such provisions.
3414. **Mr Lunn:** I think that Chris is being slightly flippant about clause 22 and the ability to buy stationery. Leave aside the fact that the suggested amendments are imprecise — we get that all the time. The people suggesting the amendments, particularly the Shared Education Programme and NICIE, seem

to be being picked on as producing imprecise amendments. What do you expect? They are not Bill drafters. However, leaving that aside, the thrust of what they are suggesting is there for all to see. The existing requirement for the Department to encourage and facilitate integrated movement does not really include, I would have thought:

“the development of co-operative educational endeavors including interfaith and multi-denominational schools”.

3415. To me, that is a departure from the existing requirement.
3416. **Mr Stewart:** Indeed. You must forgive me if I appeared flippant earlier, but actually you are making the very point that I was trying to make. That would be a major change to functions and policy. It absolutely would be the antithesis of the description of the clause, which is “ancillary powers”. It would be far from ancillary. It would be a core new function.
3417. **Mr Lunn:** Well, it appears to it to be “conducive or incidental” — “anything that appears to it”. That is the line that is terrifying everybody. I do not disagree. Maybe it is in the wrong place. Where would be the right place?
3418. **Mr Stewart:** Probably clause 2.
3419. **The Deputy Chairperson:** Should ESA have the power to do anything so as to fulfil its functions? I take it that we reserve. Any indication? OK. Should its powers explicitly include the development of interfaith and academy schools, or should they explicitly prevent academy and free schools?
3420. **Mr Stewart:** If I may say so, I think that that particular amendment would be unconstitutional. It would seek to bind the hands of a future Minister in a future Assembly.
3421. **The Deputy Chairperson:** So, are we happy to drop that amendment and move on?
- Members indicated assent.*
3422. **The Deputy Chairperson:** Should those powers explicitly prevent further delegation to schools or should they do the opposite and prevent further centralisation? I do not think we need that. Either we are reserving judgement on the whole clause —
3423. **The Committee Clerk:** Again, it is up to members. I think you want to reserve your position on whether ESA should have those additional powers.
3424. **The Deputy Chairperson:** Do I have any indications from anyone? Should those powers explicitly prevent further delegation to schools, of should they do the opposite and prevent further centralisation?
3425. **Mr Stewart:** I should respectfully point out to the Committee that the clause provides for neither the delegation nor centralisation of anything.
3426. **The Committee Clerk:** What you are looking for is the Committee’s views on proposed amendments A and D. ASCL was at one end and INTO was at the other.
3427. **Mr Hazzard:** Reject the two amendments.
3428. **Miss M McIlveen:** We need to look at this again.
3429. **The Deputy Chairperson:** Mervyn, would you like to come in? Do you want to finish this clause?
3430. **Mr Storey:** No, you finish it.
3431. **The Deputy Chairperson:** We have given you a clear enough indication of the contentment of the Committee. We are on clause 23.
- (The Chairperson [Mr Storey] in the Chair)*
3432. **The Chairperson:** I thank the Deputy Chair for looking after things. Apologies for not being here this morning; unfortunately, I had something else that I had to deal with.
3433. Clause 23 allows ESA to undertake commercial activity as approved by the Department. Stakeholders did not comment on the clause. Chris, how

much more different is this in relation to the current powers of ELBs and CCMS?

3434. **Mr Stewart:** I do not think that there is an equivalent power for ELBs or CCMS, simply because of the age of the legislation that provides for those organisations. This is fairly common in more modern legislation, and Peter has just confirmed that CCEA has a similar power. If it were still the intention that the CCEA functions were going into ESA, that would have been the most obvious place for such a power to be used. Even without the CCEA functions, this is a useful power to give to any organisation that might well be able to develop some of its activities and functions. It could then market those in a way that was helpful to other organisations and make the best return on its investment in developing its own expertise.

3435. **The Chairperson:** Do members think that ESA should be able to undertake commercial activities with departmental consent and so agree to clause 23 as drafted?

Members indicated assent.

3436. **The Chairperson:** We move on to clause 24, which is on area education plans. The clause defines an area education plan as a document, including a map, which sets out, by area, an assessment of the education and youth service need and an assessment of the existing provision, with proposals to meet the need. There was a lot of commentary, and we have proposed amendments listed as a, b, c and k. We have ones from the shared education programme. NICIE suggests amendments that seek to require area plans to include measures to promote sharing, collaboration and integration. Chris, do you want to comment?

3437. **Mr Stewart:** This is the first of the area planning clauses, and its purpose is relatively simple. It is simply to set out the concept, or the definition of the concept, of an area education plan. You have summarised it neatly. It is intended to be a statement of existing provision right across education, covering not only

schools but youth services and early years. It is a statement of need and an analysis of any difference between the two. Chair, would you like me to go through the amendments one by one?

3438. **The Chairperson:** Yes.

3439. **Mr Stewart:** There are two difficulties with proposed amendment a. First, the clause is already comprehensive. It is meant to cover and does cover all types of education provision. As we have said about a number of the suggested amendments to earlier clauses, this one is a little premature. The Minister is not yet in a position to conclude what legislation might be required, either in area planning or in any other field, to advance shared education, nor does he feel that he will be able to do so until he receives and is able to consider the report of the advisory group on shared education. So amendments a and b are, I am afraid, premature. The same applies to amendment c, some of the wording of which is also difficult because it is not precise enough.

3440. Proposed amendment d suggests a level of detail that we do not think appropriate for primary legislation. There is provision, not in this clause but elsewhere in this part of the Bill, for the Department to issue guidance and/or subordinate legislation on the content of area plans and the process for area planning. So, if we need to be more precise and more specific about what should be in a plan or how a plan should be drawn up, we think that that is the place to do so rather than in the Bill.

3441. We understand where the proposer of amendment f is coming from, but it is not the same starting point as the Minister. The starting point is the needs of children and young people rather than the current disposition or, indeed, the needs of facilities. So the proposed definition of area really does not fit with that. It should not simply be a line drawn around a particular group of providers. Rather, it should be a line drawn around particular communities with shared needs, which would have shared or common access to the

- delivery of education. The phrase that I have used before is that we are looking for something rather more sophisticated, perhaps, than the current area planning exercise, in which we look only at political boundaries. We would follow, or parallel, a concept that members will be more familiar with in economic planning, in which you see travel-to-work areas. We envisage using a concept such as travel-to-education areas. We think that a much more sensible starting point is natural communities or groups of communities that could be served by particular groups of providers.
3442. We think that proposed amendment g is simply unnecessary because there is only one planning organisation — ESA — so it will automatically ensure that its plans for different areas are coherent and take account of one other.
3443. We understand the thinking behind proposed amendment h. Depending on the wording, however, that amendment may take us beyond the legislative competence of the Assembly. We cannot legislate for outside the jurisdiction of Northern Ireland. The same applies to proposed amendment i.
3444. We think that proposed amendment j is impractical. It would be asking ESA to review decisions taken by the Minister of Education, and that is getting the relationship the wrong way round. ESA will produce plans and development proposals, but the Minister of the day will make decisions on them.
3445. We feel that proposed amendment k, as with some earlier proposed amendments on sharing and collaboration, is premature. Until the Minister and Executive have an opportunity to settle their policy position on the need for legislation, the Minister does not feel it appropriate to include an amendment such as that in this Bill.
3446. **Mr Lunn:** Proposed amendment h calls for:

“a requirement for ESA to consider cross-border educational providers”.
3447. You say, Chris, that that is outside the legislative competence of the Assembly.
3448. **Mr Stewart:** It may be, Trevor. I would not want to be as definitive as that.
3449. **Mr Lunn:** We have had a discussion about a border corridor and the needs of border communities. In some cases, it may be desirable to come to some arrangement with schools or authorities on the other side of the border, and vice versa.
3450. **Mr Stewart:** Absolutely. The Minister strongly supports that.
3451. **Mr Lunn:** That may not be within the legislative competence of the Assembly, but is there any problem with the Bill noting that possibility and, perhaps, placing a requirement on ESA just to consider cross-border educational co-operation?
3452. **Mr Stewart:** That may be possible. Obviously, the Minister clearly supports the sort of initiative that you refer to. For many years, it has been commonplace for the planning of health services to take account of services just across the border. However, there is a difference between doing something and legislating for something. The Committee and the Department would need to be careful, in framing an amendment or provision of that sort, to ensure that we remained within the legislative competence of the Assembly. We cannot legislate for something to be done outside Northern Ireland.
3453. **Mr Lunn:** Would the word “consult” not come into it somewhere rather than “consider”?
3454. **Mr Stewart:** Possibly. Trevor, I am not saying definitively that it is impossible to legislate in that way. I simply advise caution in taking forward such an amendment.
3455. **Mr Lunn:** Can we get a wee bit more advice about that?
3456. **The Chairperson:** Who would you want the advice from, Trevor?

3457. **Mr Lunn:** On the question of legislative competence, we obviously cannot legislate for anything that happens in the Republic of Ireland, and I would not want to suggest that. However, co-operation could be the most desirable and, perhaps, the only way of keeping a border school open or providing the best possible educational opportunities for a small community along the border. That is worth considering. It is really a question of to what extent it could be incorporated in the Bill. Would the Bill's draftsmen or experts in the Department have further suggestions on that?
3458. **Mr Stewart:** If it would be helpful, Chair, the Department will seek legal advice on what may be possible. It will raise questions that would need to be worked through carefully. If, for example, it is possible to introduce a duty to consult providers in another jurisdiction, the question that the legislative draftsmen may ask me is this: what if they do not feel that that consultation has been adequate? What remedy would a provider in another jurisdiction have, if it did not feel that ESA had discharged that statutory function? In contrast, we know exactly what the remedy here would be, if a provider in this jurisdiction felt that ESA had not discharged the function. I do not offer that as a reason for not legislating in this way, but simply as an example of one of the areas that would need to be worked through very carefully before attempting to do so.
3459. **Mr Lunn:** It might be a question for another day.
3460. **Mr Hazzard:** Just on the back of that, I take Chris's last point. I just wonder about the health situation that you mentioned, Chris. Am I right in thinking that the Altnagelvin cancer unit was a result of cross-border co-operation? Can we learn something from that? I know what you are saying about consultation, but we may be able to add in something.
3461. **Mr Stewart:** There are examples in education. I am simply more familiar with the health examples. Many years ago, there was an initiative called Cooperation and Working Together

(CAWT). However, for many years, the provision of acute hospital services in both jurisdictions has been planned with consultation and close co-operation between the providers and commissioners in either jurisdiction because it makes absolute sense. Hospital provision is extremely expensive, and it is important that both jurisdictions are able to maximise the efficient use of their resources, and that is commonplace. However, I am not aware, at any stage, of any legislative provision requiring that to be done. It is done simply because there is no legal impediment to doing it, and it makes common sense. The Minister, as you know, strongly supports the suggestion that there should be more co-operation between education authorities in either jurisdiction.

3462. **Ms Boyle:** I share the concern raised because there is a particular problem in my area. The area of the South less than a mile from Strabane has a particular lack of controlled schools. Every year, people from the southern side come to me seeking to access education for their child in the North because of the lack of provision near their home in the South. It is a big issue for the Protestant community in the South. So I have issues with this clause, and I do not think that I could support it being taken forward without further clarification.
3463. **The Chairperson:** Michaela is right. There is always the risk that, the moment we start to discuss something like this, it becomes a political debate about what is being done alongside another jurisdiction. There are, however, practical implications, as Michaela, rightly, referred to. Those same implications have been raised with me by a number of schools in the Republic. The issue that they have is that their schools are in small, isolated Protestant communities.
3464. We still await the outcome of the survey on this issue. The Minister attended a North/South ministerial meeting on Thursday, and his statement is due next week. So we will hear whether the

- survey has been completed, or at least get an update. It may be useful for us to wait to hear what is said then.
3465. There is a practice that currently operates between the two jurisdictions, just as there is with health. It depends whether we need to get into the area of legislation because, as soon as we do that, we create other problems and barriers that co-operation might not be able to get round.
3466. **Mr Stewart:** You are absolutely right, Chair. The Minister is looking forward to the results of that survey, which will be discussed at the North/South Ministerial Council (NSMC). He will draw conclusions from that on what, if anything, further needs to be done. Given that the work is at that stage and being looked at specifically by the North/South Ministerial Council, the Minister's view might be that it may be a bit premature to move directly into legislating in this way. That is aside from any political concerns that I might throw up. It is not that the Minister is setting his face against North/South co-operation — it would surprise people if I said that. However, he is, rightly, saying that a range of policy issues and, perhaps, some technical and legal issues need to be worked through before anyone should rush to legislate in this area.
3467. **The Chairperson:** Individual area plans are highly controversial and should not be the subject of our discussion today. However, it is for the Committee to make some determinations on the proposed amendments. Should the Bill require area plans to include a shared education definition or shared education initiatives? Should the Bill require ESA to promote co-operation between schools? Should the Bill require ESA to maximise opportunities in area plans for integration? Should a definition of an area plan be included in the Bill? Should the Bill require area plans to comply with the sustainable schools policy or the Bain report? That would apply more to the sustainable schools policy because that is a current policy of the Department. Should the Bill
- require all area planning to date to be set aside and started again after ESA is established? It would be interesting if that one got to the table. Should the Bill require area plans to take account of cross-border education? It is possible that clause 24 could cover a range of issues, but if members are content with having at least set out the issues, they must then decide whether any of these proposed amendments should form part of our formal clause-by-clause scrutiny.
3468. **The Committee Clerk:** Chair, with informal clause-by-clause scrutiny, we want members, if possible, to indicate their views on the clauses. Members indicated earlier that they might want to reserve their position. That is fine. However, members could, where they feel able, set out whether they think that a proposed amendment is great or terrible, or whether they will reserve their position. If they do not do that, it will make it very difficult to do formal clause-by-clause scrutiny because there are, potentially, 220 amendments, and I do not think that the Committee will pursue all, or even very many, of them. Rather, it will want to pursue a few critical ones.
3469. **Mr Stewart:** May I offer a general comment that I hope will help members with that batch of proposed amendments? In this and related clauses on area planning, we have tried to set out how the area planning process will work, the role of ESA and the role of the Department. A number of the proposed amendments attempt to secure a particular outcome in the area planning process, and it is our view and the Minister's view that primary legislation is not the right place to try to secure a particular outcome — that is in the area plans.
3470. As I said earlier, it is suggested that the Department have the power to make regulations and offer guidance on the content of plans and the planning process. That is the level at which you start to shape the content and the outcome of plans, but we think that it is overly ambitious on the part of some stakeholders to try to determine the outcome of plans in the enabling

- provisions that allow for the planning process.
3471. **The Chairperson:** Are there any comments? Do members want to reserve their position on clause 24?
- Members indicated assent.*
3472. **The Chairperson:** Clause 25 is on the preparation and revision of plans. The clause provides for ESA to prepare and revise area education plans and to submit those to the Department for approval. The proposed amendment from NICIE and the Integrated Education Fund seeks to require the Department to ensure that the area plans provide for the development of integrated education and that consultation with parents is undertaken to that effect. I suppose that NICIE and the Integrated Education Fund are rehearsing some of the suggested amendments to clause 24. My concern is with clause 25(3):
- “The Department may approve a plan or revised plan submitted to it either without modifications or with such modifications as it thinks fit.”*
3473. So the power for area plans rests with the Department as opposed to ESA.
3474. **Mr Stewart:** That is a fair summary, Chair. This is quite deliberate. It was the Minister’s policy intention that ESA should do the heavy lifting but that decisions on area plans and individual development proposals would remain with the Minister.
3475. **The Chairperson:** We clearly have a concern with this as it is currently drafted because it gives an unfettered power to the Department on a very sensitive and important issue. I appreciate what you are saying, which is that the heavy lifting is done, so all the information is collated and a plan is put together and sent to the Department. However, irrespective of who is in control of the Department at a given time, he or she could change or not change the shape of an area plan.
3476. **Mr Stewart:** That is absolutely correct.
3477. **The Chairperson:** We have no idea of the criteria that the Department would use to judge, score, modify, reject or amend a plan, and that would be an issue. Certainly, as far as my party members are concerned, we are concerned about the way in which clause 25 is drafted.
3478. **Mr Stewart:** You are absolutely right, Chair. Members will have to come to a view on whether that is the right way to approach this. However, it is similar to the position of today. Although we do not have a formal process for area planning — there are no specific provisions in education law — at present, plans are prepared by the education and library boards and CCMS and submitted to the Minister, who has the final say. In recent days, he indicated his displeasure with the rate of progress and the direction in which some of the plans are going. So, in that sense, it is no different. The position of individual development proposals is absolutely no different. At present, it is the Minister’s decision in law, and it is proposed that that would continue to be the case.
3479. **The Chairperson:** Will you clarify this for me, Chris? Would ESA take precedence and would development proposals, as we knew them under the legislation, cease to exist?
3480. **Mr Stewart:** No. They will still be there. When we were developing the policy and legislation on this, some argued that we should go all the way: an area plan would identify the particular schools to be built, closed or moved, and there would be no need for development proposals. Planning would simply be top-down — the Department and the Minister would decide where all the schools would be.
3481. The Minister did not feel that that was a feasible or an appropriate way to carry out area planning because it does not recognise the reality of education, which is that more than 600 of our 1,200-odd schools are voluntary schools. Those schools did not arise top-down; they arose bottom-up because communities, people and

- bodies decided to found a school. So we have a very strong voluntary tradition in education. It is sometimes felt that the Department does not value that. In fact, we do. We recognise that over half of our schools are voluntary schools, and that is one of the strengths of our education system. Therefore, we need to provide for voluntary schools in the future. If you hold on to the concept of voluntary schools, you have to hold on to the concept of development, and the legislation allows for that.
3482. **The difference would be this:** at present, a development proposal is submitted to the Department by an education and library board; and the board and the Department analyse its effect on other schools, against the information that we have on need and against the range of policies that the Department has in place, such as the sustainable schools policy. However, all of that is informal. This puts it on a formal basis and adds an additional factor. So a development plan, as well as being assessed against all of those other things, will be assessed against the area plan. If it is compatible with the area plan, on it goes through the process that you are all familiar with. If not compatible with the area plan, it does not go through that process. So an area plan performs two major functions: first, it sets out in broad terms the assessed need for a particular community and, secondly, it acts as a filter for development proposals. Development proposals that are not compatible with the plan are filtered out.
3483. Fundamentally, education provision will still contain that very significant element of bottom-up voluntary provision, and that is reflected in the development proposal process.
3484. **The Chairperson:** What do members think about clause 25? Should the Department have the power to revise area plans? Do members support the amendment, tabled by NICIE, preventing departmental approval of plans unless they provide for the development of integrated education and ESA has provided evidence that consultation with parents has taken place?
3485. **Mr Lunn:** The departmental response to the NICIE proposal refers to “shared” education, and we await a definition of that. NICIE’s suggested amendment refers to “integrated” education. I think that we are all pretty clear about what that means, so there is a slight disconnect between the proposal and response.
3486. **Mr Stewart:** The wording of the response is quite deliberate. NICIE, in suggesting a particular legislative approach to integrated education, is anticipating policy decisions that have not yet been made. That may or may not be the decision of the Minister, the Executive and the Assembly in due course. It will be taken in the context of policy decisions on shared education, which, Trevor is quite right, is not yet precisely defined. In the terms of reference that the Minister set for the advisory group, there is a broader concept than integrated education that would include integrated education. So NICIE has picked out one potential approach and one potential flavour of integrated education and suggested that we should legislate for it. The Minister is simply not ready to do that yet.
3487. **Mr Lunn:** Can we reserve judgement on that clause?
3488. **The Chairperson:** Are members content that we reserve judgement on clause 25?
Members indicated assent.
3489. **The Chairperson:** Clause 26 is on the revocation of plans. The clause allows ESA to revoke an area plan and requires it to do so, if so directed by the Department. There was no commentary from stakeholders, but I will just repeat what I said about clause 25, which concerns the power of the Department. We do not want to give the Department too much power in any of these things.
3490. **Mr Stewart:** At least we are being consistent, Chair.

3491. **The Chairperson:** Yes. Are members content that we reserve judgement on clause 26?

Members indicated assent.

3492. **The Chairperson:** Clause 27 places a duty on ESA to publicise and carry out a consultation before submitting new plans or revising existing plans for approval by the Department. ESA must consult district councils affected by the area plan, and there is some commentary from stakeholders. We have a proposed amendment from Campbell College, which would require ESA to consult boards of governors of schools affected by the area plan. A proposed amendment from NICIE, amendment b, suggests that the consultation on the area plan should have community focus, including district councils, young people and community audits.

3493. There is quite an overlap with clause 28, so I suggest that we discuss the two together. Clause 27 covers publicity and consultation, and clause 28 covers the involvement of relevant bodies. Campbell College has raised the issue about consultation with the board of governors. That could be generic across the piece, depending on what sector a school is in. In some sectors, the trustees will probably want to be consulted and then bear the responsibility of informing their board of governors. If it were made a general duty across all schools, that would, I think, be sensible. It could be copper-fastened by ensuring, as clause 28 begins to make an arrangement for, that:

"It is the duty of ESA to make arrangements with a view to securing that the sectoral bodies and the persons mentioned in subsection (2) are involved in and consulted on".

3494. **So the question is this:** who are the sectoral bodies? They must, I think, be defined. Do they have to be defined in the legislation? Say, for example, that the current situation pertained, in which the only sectoral bodies that exist are CnaG, NICIE and CCMS, so, technically, they are the only bodies that would be consulted. We would not consult the Governing Bodies Association (GBA),

and the Bill proposes, for example, a sectoral body for the controlled sector.

3495. **Mr Stewart:** All the recognised sectoral bodies would be involved. If the Bill passes into law, we will no longer have CCMS, but the intention is that there will be a sectoral body for Catholic education. The Minister does not propose to specify sectoral bodies in the Bill, but all the recognised and funded sectoral bodies will be involved in the area-planning process.

3496. Let me sum up the intention behind clauses 27 and 28. Members might want to envisage this as three concentric circles, within which we try to answer the question of who should have a role in area planning. We see three levels or modes of involvement. The broadest level, or the outermost concentric circle, is provided for in clause 27. That is the broadest possible consultation. It includes district councils or other interests beyond the immediate education family, but for whom education provision and planning is obviously very significant, and they should have an opportunity to be consulted and give their views about area planning.

3497. The second circle is those who have a much stronger and more direct interest in education. There should be a specific requirement on ESA to consult them. The broad range of persons and bodies are identified in clause 28(5): consumers of education; providers of education; parents; staff of schools; and boards of governors.

3498. Then, there is the innermost circle which, if I may oversimplify, includes those who should be around the area-planning table when the area plans are being drawn up. That is provided for in clause 28(1) and 28(2). That gives a very clear role to the sectoral bodies and other bodies representing the providers of youth services or educational services.

3499. Stakeholders, particularly the Youth Forum, drew attention to the difference between those persons or bodies that ESA has a duty to involve and those

that ESA has the power to involve. I explained that the reason for that is purely one of practicality. It is because a duty is about more than consulting; it is about consulting and involving. Although we think it is practical to have a duty to involve and consult all the sectoral bodies, it is not practical to have a duty to involve and consult all children and young people or all school governors. However, ESA should have a power to do so, and should have an effective means of ensuring that children and young people, staff of schools, other providers and boards of governors have an effective voice and an input around the area-planning table. So, there should be school governors, parents and children and young people there, but it is not practicable to have an absolute duty to involve all of them.

3500. **The Chairperson:** Any comments?
3501. There is obviously the one that continues to do the rounds on this issue. If you take one of the three circles that you referred to, we will always worry about inner circles, which create problems and difficulties.
3502. **Mr Stewart:** Perhaps I should have chosen a different analogy.
3503. **The Chairperson:** I hope that there is not an inner circle in the Department.
3504. **Mr Stewart:** I can assure you that I am not in it. *[Laughter.]*
3505. **The Chairperson:** Does everybody come to the table on the same basis? That is the fundamental issue that has beset our system for years, and it is about more than just the matter of who pays the teachers. Sometimes, I think that there has been a mistake made and it seems that it is just all about who is on the payroll. It is about the issue of who owns the school.
3506. Chris, you have heard this repeated time and again here: there are those who believe that, because they are de facto, in legal terms, the owners or the leaseholders of a property, they have a greater right to be able to determine whether school A or school B exists. We see that being played out at the moment in certain parts of the country with respect to area plans. Omagh is a prime example. On the one hand, a board can say, “You will have to do A, B and C and move on to Lisanelly”; while, on the other hand, sectors that have different ownership arrangements are hearing, “We encourage you” or “It is the only show in town” and “There is really not a big lot we can do if you decide not to do A, B and C”. Fundamentally, is that going to be any different, irrespective of whether there is a single employing authority? The phantom is now a reality because of the issue of ownership. I know that you are getting very nervous that I am straying back into thoughts of ownership in the controlled sector. That has been an issue. I know —
3507. **Mr Stewart:** Chair, we have provisions for a holding body that we can —
3508. **The Chairperson:** Just to really worry you, I have to say that I read policy paper 20 again. I am sure that you will be delighted to hear that, Chris.
3509. **Mr Stewart:** Yes, Chair. It has been some years since I have read it.
3510. **The Chairperson:** Where do clauses 27 and 28 leave us with the three concentric circles?
3511. **Mr Stewart:** I think that I can assure you on those points. If you are tempted to request us to bring back the proposals for a holding body for controlled schools, we could, of course, dust them off at any stage and bring them forward for your perusal.
3512. I do not think that employment or ownership will make any difference to the planning arrangements for schools. As you rightly said, ownership is very significant. Ownership of schools conveys responsibility and authority around things like governance, management and the appointment of boards of governors. However, the one area where it does not convey an advantage is in planning. It would, of course, be the Minister’s hope that, with Lisanelly and any planning matter, we could arrive at a consensus, where

- all the parties concerned would have a shared view of the best way forward and proceed on that basis.
3513. The Department has the power — I hesitate to describe it in those terms — to close any school, irrespective of who owns it. There is a specific power to do so in article 14 of the 1986 Order, which would be re-enacted in this Bill. The means of doing so would be that if the Minister of the day felt it necessary to close a voluntary school or a grant-maintained integrated school, he would simply direct the education and library board today, or ESA in the future, to bring forward a development proposal for the closure of that school. One would hope that we would never be in a situation where that was done in the face of opposition from the owners of the school. However, if it were necessary to do so to give effect to an area plan, the legal power is there.
3514. **The Chairperson:** It is there currently. Is that under article 101?
3515. **Mr Stewart:** No. It is under article 14 of the 1986 Order. The Department can close any school. The corollary of that is that we cannot open any school. A voluntary school is, by definition, a voluntary school, and it emerges from a person or body deciding to establish a school. However, we can close any school.
3516. **The Chairperson:** There are no further comments from members on clauses 27 or 28. I think we should reserve our position as there are issues.
3517. **Mr Kinahan:** Reserve.
3518. **The Chairperson:** Clause 29 requires ESA to take account of guidance issued by the Department on the production of area plans. The Community Relations Council suggested an amendment that would require ESA to take account of departmental guidance on area plans, which would include a duty to promote shared education. That is similar to what we have discussed.
3519. Are there any comments from members on clause 29. Chris, do you want to comment on the suggested amendment from the Community Relations Council?
3520. **Mr Stewart:** The wording of the amendment seems slightly out of kilter with the commentary the council provided for it. As we have said about a number of the previous amendments, we feel that it is premature to consider legislating in advance of the Minister having an opportunity to receive the report on shared education.
3521. The clause is the embodiment of what I was saying earlier. The Department does not see the need to try to specify the outcome of the area-planning process in the Bill, but it does feel that it is important to have the opportunity to influence how ESA operates, if necessary, in the future. So, the opportunity is there to produce guidance, and the next clause provides the opportunity to produce subordinate legislation, if we think it is necessary to do so. That is to reflect the fact that policy will evolve. Were there to be a successor to the Bain report or to the sustainable schools policy, the Minister of the day might want to reflect such changes and make sure that ESA does so in the area-planning process. That is the purpose of the clause.
3522. **The Chairperson:** Does the legal position of guidance remain as it is? My understanding is that the current legislative position is that it is guidance and that you must ensure that you have taken due consideration of that guidance, but that a contrary decision could be made by ESA on a particular area plan.
3523. **Mr Stewart:** The position of guidance remains in law, and, as members will be familiar with, it is sometimes referred to as “soft law”, but it does not have the force of law. However, in this particular situation, where we are talking the relationship between the Minister of the day and ESA — an arm’s-length non-departmental public body — the relationship is one of accountability. There will be a requirement and an expectation on ESA to deliver the policies of the Minister of the day and, if

- needs be, the back-up of article 101 is there to direct ESA, should the Minister of the day feel it necessary to do so. In that context, it has to be acknowledged that guidance may carry a bit more force than it would, for example, in the relationship between the Department and a school.
3524. **The Chairperson:** Should we reserve our position?
3525. **Mr Lunn:** Why does it state “take into account” rather than use some of these other phrases that we love so well, such as “have regard to”?
3526. **Mr Stewart:** Trevor, I would again have to defer to the Office of the Legislative Counsel on that. That is the wording that was thought most appropriate to describe how guidance would be used.
3527. **Mr Lunn:** Does it give it more weight?
3528. **Mr Stewart:** I do not think so.
3529. **The Chairperson:** OK. Do we reserve our position?
Members indicated assent.
3530. **The Chairperson:** That takes us to clause 30, “Regulations”. The clause allows the Department to make regulations to control the form and content of area plans; the procedures to be followed in the production of an area plan; and on the procedures for consultation. No stakeholders commented, but I have the same concern about the regulations being subject to negative resolution.
3531. **Mr Stewart:** Peter reminds me that it is the negative resolution procedure, yes, which would be the norm.
3532. **The Chairperson:** Do members want to rehearse the negative resolution procedure?
3533. **Mr Lunn:** Please, no.
3534. **The Chairperson:** OK. Do we reserve our position?
3535. **The Committee Clerk:** Are you content that it is subject to —
3536. **The Chairperson:** Well, negative resolution simply means that the regulations must be brought before this Committee and the Assembly.
3537. **The Committee Clerk:** They would not go before the Assembly unless someone prayed against them.
3538. **The Chairperson:** Yes, but ultimately they would be here. The regulations could not be laid without them coming to the Committee. Is that right?
3539. **Mr Stewart:** Correct.
3540. **The Chairperson:** Are we happy to reserve our position?
Members indicated assent.
3541. **Ms Boyle:** I am content.
3542. **Miss M McIlveen:** Again, it relates to area planning. If we have concerns about clauses in relation to area planning, I am not sure that we can then agree to clause 30.
3543. **The Chairperson:** Yes, because they are interrelated. OK. We reserve our position.
3544. Clause 32 is relates to the transfer of assets, liabilities and staff —
3545. **The Committee Clerk:** Clause 31.
3546. **The Chairperson:** Did I miss one? I am fairly going well today.
3547. **Mr Stewart:** You missed a fairly important one, Chairman. *[Laughter.]*
3548. **The Chairperson:** Oh, there would be no ESA if we missed this one. That is not me trying to be mischievous. Clause 31 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. I think that we will reserve our position on this clause as well. OK?
Members indicated assent.
3549. **The Chairperson:** Clause 32 is the one that I love. It concerns the transfer of

- assets, liabilities and staff. It applies to schedule 4, which allows for the transfer of assets, liabilities and staff from the dissolved bodies to ESA. We will deal with schedule 4 later. The clause also applies to schedule 5, which deals with the transfer of assets, liabilities and staff, CCMS and ESA. We propose to deal with schedule 5 later. The clause also applies to schedule 6, which deals with the transfer of staff from the Department to ESA. Again, we will look at schedule 6 later.
3550. No comments were made by stakeholders. Any comment from you, Chris?
3551. **Mr Stewart:** Very little, Chair. The clauses — perhaps not the schedules — are relatively straightforward. Clause 31 and clause 32 make a pair. The effect, quite simply, as is apparent from the clauses, is to dissolve the eight existing organisations and make provision by means of schemes to transfer the staff, assets and liabilities of the dissolved organisations to ESA.
3552. **The Chairperson:** Do we have a breakdown yet?
3553. **The Committee Clerk:** Not yet.
3554. **The Chairperson:** The Bill refers to “certain assets and liabilities of CCMS”. It also refers to “certain staff from the Department to ESA.” We have not seen a breakdown of that as yet, although “staff” has been referred to.
3555. **Mr Stewart:** It is not available just yet, Chair. My colleague Paul Price is working on that. We hope to have information with the Committee in due course. My colleagues in the Department, including the ESA implementation team, have said that they want to ensure that the information that we provide is accurate and up to date. It is a fairly involved exercise to specify all the assets and liabilities. If they do it too early, there is the possibility that something could change between now and the appointed day. They are cognisant of the Committee’s request for information. We will bring that to you as soon as we can.
3556. All CCMS’s assets and liabilities will transfer somewhere; it is just that they will go in two different directions. Some of the assets will return to the Church because they were not publicly funded, but all the assets and liabilities that were publicly funded will go to ESA.
3557. **The Chairperson:** We had reserved our position on this. A paper was done — my wonderful filing system means that I cannot get my hands on it — that set out the terms and conditions under which transfers took place. If I remember correctly, we raised an issue about the law changing around 1971.
3558. **Mr Stewart:** Is it about the famous clawback arrangements, Chair?
3559. **The Chairperson:** Yes, the clawback arrangements. Maybe it would be worthwhile bringing that back to consider.
3560. **Mr Stewart:** It might actually be simpler than that. Those arrangements would mainly affect the capital funding of schools. Of course, it is not schools that are transferring; it is the headquarters’ assets of CCMS. Therefore, it is simpler. If an asset was publicly funded, it transfers to ESA. If an asset was funded by the Church, it might revert to the Church. If ESA felt that it still needed that asset, its ownership would revert to the Church but ESA might lease it from the Church if it were needed for the ongoing delivery of a service. The Minister is absolutely clear that the publicly funded assets of all those organisations will remain in the public sector and will transfer to ESA.
3561. **The Chairperson:** Members, I think that we will reserve our position until we see the information that comes from the Department about what is transferring. OK?
- Members indicated assent.*
3562. **The Chairperson:** The plan was that we would stop at this point and suspend the proceedings until 9.30 am tomorrow in the Senate Chamber, when we will resume at clause 33.

6 March 2013

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 Pat Sheehan

Witnesses:

Mr Peter Burns
 Mr Chris Stewart *Department of Education*

3563. **The Chairperson:** OK, members, let us return to our favourite subject. We are delighted that we have our two favourite members of the Department of Education (DE) in front of us today.
3564. **Mr Chris Stewart (Department of Education):** Is that on the record, Chairman?
3565. **The Chairperson:** It is. This session is being recorded by Hansard. That is why I said that.
3566. Peter and Chris, you are welcome. We will make a start and try to keep this moving. I would like to make some progress on the Committee's work on the Bill. That would be helpful.
3567. In this session, we will consider each of the more straightforward clauses in turn and the proposals for amendment as set out in the table in members' packs. As necessary, I will ask the Department to remind the Committee of its evidence on the clauses and amendments and ask members to indicate their views. If there is consensus on a clause, the Committee Clerk will update the table accordingly, and the minutes of the meeting will indicate that there is informal agreement. If there is no consensus, we will ask members to set out their different views on the clauses and amendments, and the Committee will informally determine its position.
3568. This is members' final opportunity to seek Committee support for their position on a clause or amendment. It is also the final opportunity to seek Committee support for any new amendment that members may wish to propose. No vote will be taken at this stage, and, if necessary, the Committee will divide during formal clause-by-clause scrutiny. We have agreed that that will commence on 19 March.
3569. We will begin where we left off yesterday, at clause 33. Clause 33 is in Part 2 of the Bill, which deals with the management of grant-aided schools. The clause requires every grant-aided school to have a scheme of management in place. Schemes will set out the membership and procedures for boards of governors and must be consistent with legislation, including the Education Bill and any instrument of government of schools. Boards of governors must give effect to a scheme of management. Schemes of management for Irish-speaking schools or schools with an Irish-speaking unit must require boards of governors to use their best endeavours to maintain the viability of the school or unit.
3570. Some of the trade unions suggested that the clause be amended to require schemes of management to be standard documents with little variation. Trade unions also sought an amendment to require that they be consulted on the content of schemes. The Northern Ireland Teachers' Council (NITC) requested an amendment that would alter schemes of management to prevent boards of governors from limiting staff mobility. The Association of Teachers and Lecturers suggested that all schemes of management should be public documents.

3571. Chris, do you have any comments on clause 33?
3572. **Mr Stewart:** Certainly, Chair. Members will notice that clause 33 and the clauses that follow are very similar in construction to clauses 3 to 8, which deal with employment schemes. Indeed, many of the suggested amendments are very similar to the ones suggested for those earlier clauses.
3573. Clause 3 is the foundation of this part of the Bill, and, as you have neatly summarised, Chair, it sets out what schemes of management are and what provisions in the Bill will govern their content. It is worth reminding members that, unlike schemes of employment, schemes of management are not a new concept. There is a current requirement in education law for every school to have a scheme of management and to submit it to the Department for approval. There is also a provision in law for the Department to modify schemes if it sees fit.
3574. The changes in this clause and the succeeding clause put that process on a very different footing. The schemes would be submitted to the Education and Skills Authority (ESA) rather than the Department, and, as with schemes of employment, ESA's discretion to decline to approve or modify a scheme will be very much less than that of the Department today. In essence, ESA would be unable to decline to approve a scheme unless it failed to meet the statutory requirements. If a scheme can be modified, and the modifications can be agreed with the submitting authority, ESA must do that. If not, a scheme that is not approved must go forward to the tribunal that will be established to deal with disputes.
3575. **Mr Lunn:** What is the relationship between schemes of management and schemes of employment?
3576. **Mr Stewart:** There would be a hierarchy involving the legislation, what are known as instruments of government of the school, schemes of management and schemes of employment. In essence, they would go in that order. Obviously, nothing trumps legislation, and all the other items that I mentioned must comply with legislation. An instrument of government — if there is one — is what caused a school to come into being and is next in the order of hierarchy, and a scheme of management must comply with the instrument of government of a school. As we go down the chain, the scheme of employment must comply with the scheme of management.
3577. **Mr Lunn:** Are they all instruments of government?
3578. **Mr Stewart:** In the broadest sense, yes. They would all be interrelated.
3579. **Mr Lunn:** Clause 33(4) states:
"The scheme of management ... shall—
(a) not contain any provision which is inconsistent with any provision of the Education Orders or ... statutory provision
(b) ... be consistent with any instrument of government of the school".
3580. Sorry, I do not know how I to put this, but may we safely assume that our failure to receive advice about clause 3 might reflect on our ability to consider this clause? Both clause 33 and clause 3 deal with instruments of government. Clause 3 deals with schemes of employment that are yet to be included.
3581. **Mr Stewart:** In answering your question, I will scrupulously avoid making assumptions about what members are or are not concerned about. However, if members are concerned about potential amendments to clauses 3 to 8 that they have not yet seen, it would be reasonable to have similar concerns about these clauses because they are very similar in construction. The issues under consideration for a potential amendment would apply to both sets of clauses, particularly those concerning the role of the tribunal in disputes.
3582. **Mr Lunn:** I will put it another way, Chairman: we should probably park these clauses on the same basis as we parked clauses 3 to 12.

3583. **The Chairperson:** That would mean parking clauses 33 to 37. Are members agreed?
3584. **The Committee Clerk:** It would be helpful for me to know the answer. Do members feel that they could set out their views on any of the proposed amendments, or do they want to reserve their position on the lot?
3585. **Mr Lunn:** We want to reserve our positions.
3586. **The Chairperson:** Yes, we will reserve our positions. Are members agreed that the Committee reserve its position on clauses 33 to 37?
- Members indicated assent.*
3587. **The Committee Clerk:** Very good, Chair. Thank you.
3588. **The Chairperson:** That makes my life a wee bit easier.
3589. **Mr Craig:** I would have thought that the scheme of management would have been public and open to public scrutiny. I read a comment that it was not a public document.
3590. **Mr Stewart:** Yes, I would have thought so. The Minister is open-minded about that proposed amendment. He would also feel that to whatever extent these documents are not already public, they ought to be.
3591. **Mr Craig:** I just cannot understand why anybody would think that they would be secret.
3592. **Mr Peter Burns (Department of Education):** The Department has the schemes of management and will release them to any member of the public who wants to see them.
3593. **The Committee Clerk:** Just for members' information, the draft model of schemes of management, which we saw two weeks ago, indicated that the scheme of management would be available to any member of staff who wanted it. The position on the scheme of employment was not quite clear.
3594. **The Chairperson:** Clause 38, "Duties of Board of Governors in relation to achievement of high standards of educational attainment." This clause requires boards of governors to promote the achievement of high standards of educational attainment. It requires boards of governors to co-operate with ESA on actions undertaken by ESA to promote high standards.
3595. A number of respondents suggested that the clause be amended to better define "attainment" or to explicitly require boards of governors to add value rather than simply achieve high standards. I am referring to proposed amendments a, b and i. Others suggested that the requirement be changed or modified, which takes in proposed amendments f and g. These suggestions come mainly from the unions and the Northern Ireland Commissioner for Children and Young People (NICCY). Chris, do you have any comment?
3596. **Mr Stewart:** This is a short but very important clause. It is at the core of the Minister's policy intention for the Bill overall and the establishing of ESA. We have often made the case that the thrust of the policy is about embedding the raising of standards throughout education and, of course, not just in ESA but in schools. This clause purports to make explicit for the first time that it is the duty of boards of governors to act in pursuit of that.
3597. We recognise that when some boards of governors read that, they will, understandably, have concerns and want to know more about what it means. The clause, for the first time, gives recognition in legislation to what the best boards of governors already do. Boards of governors are dedicated groups of people who see their role as promoting the achievement of high standards in schools, so we are finally giving recognition in law to what they already do.
3598. I will move on to the second part of the clause, which is clause 38(2). A concern that members frequently hear about the Bill is that it introduces a system of

command and control, whereby ESA will continually interfere in what schools do. The counterfactual case is made by this clause. Yes, there is a duty on boards of governors, but merely to co-operate with ESA. It does not give ESA the power to direct a board of governors to do anything in particular or to interfere or directly intervene in a school. It asks a board of governors to co-operate, to act reasonably and work alongside ESA in their shared objective of promoting the achievement of high standards.

3599. **The Chairperson:** What in the Bill as currently drafted takes precedence? The Education and Training Inspectorate (ETI) has a remit to inspect schools. Should the board of governors pay more regard to ETI or, were this duty to be introduced, to ESA?

3600. **Mr Stewart:** Our aim is that they would pay equal regard, and, indeed, all three should work together. Certainly, ETI will work very closely with ESA. The powers available to inspectors will be stronger than those in this provision for ESA. However, for this to work successfully, it must be on the basis of a partnership of boards of governors, the inspectorate, the rest of the Department and ESA. It would be the inspectorate's job and, to a lesser extent, ESA's to gather the evidence and information on good practice and on areas that need to improve. ESA must recognise where the practice is good and challenge schools where it is less good. It must work with schools as they determine the way forward and the strategies and plans that they will put in place to secure improvement. In that regard, there is no role for ESA in intervening, directing, commanding or controlling schools. In the very extreme situation of intervention being required, those powers would remain with the Department.

3601. **Mr Kinahan:** I want to explore exactly what is meant, Chris, when you talk about "co-operate". If someone is directed to do something and does not, that is not co-operating, so that opens up a whole —

3602. **Mr Stewart:** It does. It is perhaps best illustrated by providing an example. The main feature of the co-operation that ESA will seek is the provision of information by schools to it. Some of that information, such as examination results, will already be freely available. However, ESA will look for information from schools on how and what they are doing, and schools will be required to co-operate in providing that. It is in the clear interest of a school to co-operate with ESA, so we do not expect this to happen, but should a school refuse to co-operate for some reason — perhaps it genuinely thought that ESA was being unreasonable in its request — ESA would not be able to command or direct that school. Rather, it would have to raise a dispute with the Department, perhaps using the article 100 mechanism, and ask the Department to rule on it. Alternatively, in a very extreme circumstance, it might ask the Department to use its power of direction. Those powers are there as a backstop, and we do not envisage them being used. We know that some stakeholders and some people in schools have concerns, particularly about education, but we think that the importance of the raising standards policy in Every School a Good School is broadly recognised. Teachers and governors throughout education also recognise that we should be in the business of raising standards, not interfering in schools.

3603. **Mr Kinahan:** I fully agree.

3604. **The Chairperson:** There were other responses on this. The Children's Commissioner, for example, asked about providing additional support for governors; the Confederation of British Industry (CBI) suggested that boards of governors be required to promote connections with business; and the NITC wanted changes that would require trade union representation on boards of governors. Have members any other views or comments on the amendments that we have considered?

3605. **Mr Stewart:** I think that the Minister would regard the CBI suggestion

positively and share the view that co-operation with industry is very important. The education system produces what may be termed the human capital for our economy, and it is very important that it does so effectively. Although we support the aspiration, we think that it would be very difficult to capture that in legislation. However, it is something that we would expect ESA and boards of governors to do.

3606. **The Chairperson:** There is also correspondence from the Council for the Curriculum, Examinations and Assessment (CCEA). It sets out the work that it does on interaction with trade and industry, and so on. I think that that is an ongoing process, and it certainly needs to be encouraged.

3607. **Mr Kinahan:** We might see something from the Department for Employment and Learning (DEL) when it comes through with its amendments.

3608. **The Chairperson:** Yes, but their amendments are more to do with certain issues. Are members happy that we reserve our position? We are not considering any amendments to clause 38.

3609. **Mr Lunn:** Are we reserving our position, Chairman? Are we not agreeing that we should not consider any amendments? If so, that means that we have actually reached agreement on a clause.

3610. **The Chairperson:** Yes, you are right. Do members agree to clause 38 as drafted?

Members indicated assent.

3611. **The Chairperson:** Clause 39 deals with the appointment by ESA of governors to controlled, maintained, grant-maintained integrated and certain voluntary grammar schools. Clause 39 transfers from the education and library boards (ELBs) to ESA the right to appoint governors to some schools. It 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 the continuing viability of the school or unit.

3612. As before, the trade unions suggested amendments that would give trade unions representation on boards of governors. The Northern Ireland Youth Forum suggested that the Bill be amended to require ESA to give young people places on the board of governors. That covers proposed amendments a, b and k. The issue of unions or young people having a right to representation on the board of governors was also raised. Chris, do you want to comment on that?

3613. **Mr Stewart:** Clause 39 is a particularly challenging read. It is largely technical, and it achieves the transfer of a function from the Department and education and library boards to ESA, that function being choosing a certain proportion of the membership of boards of governors. However, other than that, the overall composition of boards of governors in the various types of schools is not changing. The effect of the clause is simply to take the share of appointments, which, today, would be made by the education and library boards, add that to the share that would be made by the Department, and pass that over to ESA. Other than that, the numbers do not change. Members will see the various calculations and sums in the clause. They are complex, but please be assured that we have checked them very, very carefully to ensure that we have not made any unintended changes.

3614. The parts of the clause that are not technical — those that reflect our broader policy aims — are those on the requirement for ESA to choose persons who appear to be committed to the ethos of the school. There are also various references to Irish-speaking schools. The former was a substitute for a provision in the previous Bill, in which, members will recall, we had purported to introduce the concept of community governors. That did not find favour anywhere, and there was a lot of concern about it. The Minister decided not to pursue it. Instead, he

- decided to reflect what we had heard from many stakeholders, which was that it would make sense to appoint people who were committed to the school. Again, that recognises the very important role of boards of governors. It seemed appropriate to reflect that in the legislation.
3615. The specific references to Irish-speaking schools are a carry-forward from the direction in which the Bill from the previous mandate was heading. A number of amendments along those lines had been suggested by MLAs, and the Minister decided to incorporate them into the Bill this time round.
3616. **Mr Lunn:** Is there a comparable requirement somewhere of an onus on the Minister to ensure that governors appointed to integrated schools are committed to the ethos?
3617. **Mr Stewart:** Yes. The clause's requirement for commitment to ethos would apply to all types of schools. On the other requirement for commitment to the continuing viability of the school, for once, I will not give the answer that you are expecting. There is not an equivalent, in existing legislation, on the integrated side.
3618. **Mr Lunn:** Give me a bit more detail. You caught me on the hop there.
3619. **Mr Stewart:** You were probably expecting me to say that there is an equivalent provision in the 1989 order, but there is not. That provision was not even in the previous Bill as drafted. It was proposed by the former Deputy Chair of the Committee as an amendment. The previous Bill, as you recall, did not get to Consideration Stage. Therefore, there was no opportunity for the Assembly to decide whether to take the amendment. In preparing the Bill this time round, the Minister had sympathy with the provision and asked for it to be included in the Bill from the outset.
3620. **Mr Lunn:** I think that I must be going slightly brain-dead. Are you saying that when the Minister is appointing governors to integrated schools, there will be a requirement for the appointees to be committed to the ethos and the viability of the school?
3621. **Mr Stewart:** Just the ethos.
3622. **Mr Lunn:** Just the ethos. If he is appointing governors to other types of grant-maintained schools, will there have to be a commitment to the viability?
3623. **Mr Stewart:** No. The commitment to ethos applies to schools of all types. However, it is only for Irish-speaking schools that there is a requirement for a commitment to viability.
3624. **Mr Kinahan:** My question relates to the amendment proposed by the Transferor Representatives' Council (TRC), to which part of the departmental response is:
"It is not the Minister's policy to establish a hierarchy of consultees".
3625. Maybe I am muddling two things up, but I am sure that, yesterday, we heard of a series of concentric circles depicting how various groups and people were to be consulted. Surely, we have a hierarchy, in some form, of how people are consulted.
3626. **Mr Stewart:** I have to accept, Danny, that you make a fair point. The description that I gave yesterday was, indeed, of a hierarchy that applied in those particular circumstances. However, TRC's proposed amendment is that ESA should consult two groups of people but predetermine the outcome and say that the views of one group will take precedence over the views of the other. The Minister does not think that that is the right way to go. In deciding on the views of consultees, we think that we should give weight to what is said rather than to who says it. It is the quality of the argument and views put forward that will determine, if you like, the hierarchy rather than it being predetermined from the outset.
3627. It is very important to consult sectoral bodies. They have a very significant role in encouraging people to come forward for appointment as governors. Therefore, they should be consulted,

- and considerable regard should be paid to their views. Equally, we should consult boards of governors. They are the people who do this very, very difficult task. We feel that they should be asked, and listened to very carefully, about what additional skills they feel might be required on a board of governors.
3628. **The Chairperson:** Is there a role for the Commissioner for Public Appointments in this? The Bill sets out the appointment by ESA. However, say, for example, there are two places on a board of governors, which had previously been appointed by the education and library board. ESA will now take over those appointments. Will ESA trawl for four people for two places? We have had the very contentious issue of the Department, in its appointments, saying that to appoint people to a particular board of governors, it needed four people to give the Minister a choice. The stand-off continues at Belfast City Council.
3629. **Mr Stewart:** I must confess that I do not know whether, or to what extent, the Commissioner for Public Appointments regime applies to school governors. I should know, and I apologise to members. I will check that technical point and write to the Committee. I can say that no change is proposed. So whatever the arrangements are today for the appointment of school governors, those appointments will be made in the same way, even though ESA will appoint in the future.
3630. **The Chairperson:** You know that we have major concerns about the delays that have been ongoing for some considerable time in the Department. I know, from questions that we have tabled in the House, that there are long delays in appointments, with schools waiting, sometimes for years, for the Department to appoint people to boards of governors. Some attempt was made recently to address that, but there is a huge deficit of members who have not been appointed.
3631. **Mr Stewart:** The Department recognises that. It is very important that we do not
- leave vacancies for any length of time in boards of governors. They have an important job to do. I am not attempting to be facetious, but if the concerns are about the Department's efficiency, the sooner we get this moved across to ESA, the better.
3632. **The Chairperson:** It might be a classic case of passing the buck.
3633. **Mr Lunn:** I want to go back to viability versus ethos. Is it fair to ask what was in the Minister's mind when he felt the need to stipulate that a commitment to the viability of an Irish-speaking school was important but that, by implication, a commitment to the viability of any other type of school was not? Surely, it is pretty basic.
3634. **Mr Stewart:** I have no doubt that the original proposal for this type of provision and the Minister's subsequent decision to include it in the Bill stem from consideration of something that we have talked about many times, which is our Department's duty to encourage and facilitate Irish-medium education. Straight away, I recognise that there is a corresponding duty in relation to integrated schools, so perhaps there is an argument to be made for a similar provision for integrated schools. However, there is no such statutory duty in relation to any other type of school.
3635. **Mr Lunn:** For once, I was not making the case for integrated schools; it is more a case that it should apply to all schools. If it is suitable for one type of school in the spectrum, what is the difference? Why would you not place a duty on the Minister to consider an applicant's attitude to the viability and ethos of a school before he appoints them to any board?
3636. **Mr Stewart:** There is no technical reason why not. This is purely an issue of policy. If the policy consensus was that there should be a similar duty in relation to all schools, there would be no technical reason for not doing it.
3637. **Mr Lunn:** I feel an amendment coming on, Chairman.

3638. **Mr Kinahan:** Chris, when it comes to appointing persons “appearing to ESA” to be committed, how do we define appearing?
3639. **Mr Stewart:** That recognises that neither ESA nor anybody else is in a position to be absolutely certain of a person’s commitment. One could and should seek evidence or information of that in the application process, even in the very simplest way. We do not want to make the application forms any more complicated than they need to be. However, it would not unreasonable to ask in the application form for the person to indicate what type of school or what particular school they are interested in serving on and then to mention the duty and ask for evidence of their knowledge, understanding and commitment to the ethos of the school. We would need to strike a balance between making that meaningful and not tokenistic, and not asking people to go through a written examination to become a school governor, which would be likely to put people off.
3640. **The Chairperson:** Could we introduce a test?
3641. **Mr Stewart:** As long as it is not computer based, Chairman.
3642. **The Chairperson:** You could call it the 12-plus or the 13-plus — might as well introduce a bit of controversy.
3643. **Mr Stewart:** If we put it that way, I am not sure that it would find favour with the Minister.
3644. **The Chairperson:** I do not think that it would. It is a challenge for any organisation to determine from an application form whether a person is committed to the ethos of the school. I think that there needs to be an understanding of how the application is worded in the first place. It should be stated on the application form that, to be considered, applicants need to be able to demonstrate that they are committed to the ethos of a particular school.
3645. **Mr Stewart:** That is right, Chair. The other thing that we have to bear in mind is that this is a further challenge for ESA. It will not be ESA that determines the ethos of the school; it will be the school. We are asking ESA to make proxy judgements on behalf of schools. To make those assessments, ESA will have to consult the school, the existing board of governors and probably the relevant sectoral body.
3646. **Mr Kinahan:** If someone is appointed to a board of governors but does not then appear to follow its ethos, do we then move to a different clause on the removal of governors?
3647. **Mr Stewart:** That takes us back into the territory of the potential removal of governors. As we mentioned briefly last week, the Department is working on some subordinate legislation, and we can check on the progress of that. I do not think that it is the intention, Danny, and I think that it would be very difficult to use that as a criterion for removing a governor. As we have conceded, this is, to a degree, a subjective judgement. We need to tread very carefully in appointing people partially on the basis of a subjective judgement and even more carefully — very carefully indeed — before removing someone on the basis of a subjective judgement of their commitment to something as difficult to define as ethos.
3648. **Mr Craig:** If you were a teacher or a head, why would you bother removing governors?
3649. **The Chairperson:** OK. Obviously, there is no consensus, and there are issues with clause 39 that still need to be addressed.
3650. **Mr Lunn:** Schools need to have a statement of their ethos.
3651. **Mr Stewart:** It would help if they did, and we would expect to find that in their scheme of management and scheme of employment, particularly the former. Many stakeholders, particularly those from Catholic education, said that they have long sought an assurance that it would be lawful for

- submitting authorities and boards of governors to act in the discharge of their management and employment functions, lawfully, and according to the ethos of the school. They were looking for an opportunity to do just that — to capture in written form the ethos of the school. Given that it would be well-nigh impossible, I think, to legislate for ethos, we advised them that they could appropriately and usefully reflect that in the scheme of management.
3652. **Mr Lunn:** We will come back to that one.
3653. **The Chairperson:** Are members content that we reserve our position on clause 39?
Members indicated assent.
3654. **The Chairperson:** Clause 40 provides for part-time teachers to be eligible for election as governors. There were no comments from any stakeholders. The clause simply provides for the omission of the words “or part-time”.
3655. **Mr Stewart:** It is just a technical clause that rectifies a long-standing anomaly. The current legislation does not allow part-time teachers to be elected to boards of governors, which is probably discriminatory and certainly unwise. So the Minister is keen to remove that anomaly.
3656. **The Chairperson:** Is the Committee agreed on clause 40?
Members indicated assent.
3657. **The Chairperson:** That is three out of 66. We are doing well. You might get your Easter holidays if you keep going at this rate.
3658. **Mr Stewart:** Is that on the record, Chairman?
3659. **The Chairperson:** Unfortunately, it is.
3660. Clause 41 deals with the management of controlled schools. The clause makes the board of governors of a controlled school responsible for its control and management, and it also permits more than one controlled nursery school to be grouped under a single board of governors.
3661. The Sharing Education Programme (SEP) in Queen’s suggested an amendment that would allow two or more controlled primary schools to be managed by a single board of governors.
3662. The TRC proposed an amendment that would allow transferors to retain their representation on a board of governors when a controlled school merges with a controlled grammar and keeps its grammar ethos. Chris, I note your point in response to the TRC:
“A provision to establish such rights may be regarded as discriminatory (and therefore unlawful) as, unlike primary and secondary schools, the provision would not be based on preserving existing rights.”
3663. **Mr Stewart:** I will deal with that specific point first and then return to the generality of the clause.
3664. The Minister absolutely understands the request from the TRC and is very sympathetic to it, but we have a very substantive legal obstacle that would prevent us from saying yes to this. Members will be very familiar with this territory. Throughout the passage of the previous Bill, and in preparation for this Bill, successive Ministers have very much wanted to preserve the rights of transferors to membership of boards of governors and education administration bodies. For a long time, we felt that the legal obstacle to that was insurmountable, but, thankfully, we eventually found a legal rationale for preserving the TRC membership rights, based on the argument that — I am oversimplifying this — it is not discriminatory to preserve the TRC’s long-established right. Therefore, we are fine on the provisions for membership of boards of governors and the provisions for membership of ESA because there are rights that can be preserved. Unfortunately, transferors have never had a right of membership to controlled grammar schools. They were never transferred in any sense, so, unfortunately, we cannot rely on the legal argument that we are avoiding discrimination simply by preserving existing rights.

3665. **The Chairperson:** Is the protection, in some regards, similar to what we discussed in relation to clause 39 on appointments — the duty would be placed on ESA to appoint to the board of governors of a school those who appear to be committed to the ethos of the school? That would be one way of —
3666. **Mr Stewart:** I think that that would help and would not allow ESA, for example, to go to the extent of setting aside a certain proportion of the board of governors for, as it were, TRC appointments. The Minister wants the TRC to continue to do what it currently does, which is encouraging and nominating people to come forward to serve on the boards of governors of controlled schools, including controlled grammars. I think that the Minister would be delighted if he were in a position to underpin that in legislation and give them that as of right, but the legal position is that we do not feel able to do that. However, the Minister definitely wants that to happen and the TRC to continue putting forward good people to serve on controlled schools' boards of governors.
3667. **The Chairperson:** Do members have any comments?
3668. **Mr Stewart:** Chair, may I just go back to the generality of the clause? It is in two parts. Clause 41(1) is an example of a few words that have a profound and important effect. It is a very significant change for controlled schools. Today, controlled schools are managed by education and library boards. On foot of the Bill, they will be managed by their boards of governors. This is a very significant autonomy measure, putting controlled schools' boards of governors in the same position as other schools' boards of governors by making them responsible, giving them autonomy over the day-to-day running of the school and freeing them from any measure of control by an education and library board.
3669. The second part of clause 41 touches on what we might loosely term a federation or grouping of schools. It is a very modest proposal, which would simply allow for a little more grouping than is currently the case at primary or nursery school level in the controlled sector. We would like, if we could, to go further than that and allow for more grouping of schools, possibly at post-primary level as well. The reason for not having done so is a rather prosaic one, I am afraid. It would require a great deal of legislative change, and there simply was not time in the preparation of the Bill to provide for that. We also want to see what the ministerial advisory group on shared education will recommend on sharing or federations, which takes us into the even more difficult territory, perhaps, of federating across sectors or school types. That would require very significant legislative change indeed.
3670. **The Chairperson:** The amendment suggested by the Sharing Education Programme would allow two or more controlled primary or post-primary schools, which are not integrated schools, to be managed by a single board of governors. That is more cross-sectoral.
3671. **Mr Stewart:** A cross-sectoral federation would be extremely difficult, simply because the composition of boards of governors in different sectors or school types differs. If, for example, you wanted a federation between a controlled school and a maintained school — either primary or post-primary — that could not be achieved at present because the composition of the boards of governors is different. So, if we were to provide for that sort of federation in the future, we would have to make very significant changes to the composition of boards of governors. In effect, we would have to standardise them between controlled and maintained. That would take us beyond the scope of the heads of agreement. I do not think that the authors of the heads of agreement had in mind ruling out that sort of federation. Nevertheless, it is beyond the scope of the Bill that we were asked to prepare.
3672. **Mr Lunn:** What is the reason for identifying controlled integrated primary schools as being outside this?

3673. **Mr Stewart:** The particular composition of their boards of governors differs from that of other controlled schools.
3674. **Mr Lunn:** Two controlled integrated schools will, presumably, have the same composition of boards of governors?
3675. **Mr Stewart:** Yes.
3676. **Mr Lunn:** That said, I do not think that it is very likely because, geographically, they are widely separated.
3677. **Mr Stewart:** That is the more pragmatic point, yes. There would not be the same technical impediment to federation. However, yes, they are unlikely, particularly at primary level, to be close to each other.
3678. **Mr Lunn:** So why exclude them? Is the Bill trying to avoid the possibility of a controlled primary amalgamating with a controlled integrated school?
3679. **Mr Stewart:** There is no policy opposition to that sort of development. This is purely recognition of the technical differences in the composition of boards of governors between different types of schools. When the provision that the Bill replaces, which is in the 1986 order, was drafted, the issue of federation was not very high on any policy agenda. It is not that a conscious decision was taken to rule things out; there was just no impetus or desire to provide for them, and so it was not done. This time, we have, almost in passing, done a little bit of tidying up or made a little change at the margin, which will allow for a little more federation. However, we recognise that there is a much broader and more difficult question to be asked and answered, which is how we provide for more federation or different models of sharing between schools of different types. The Minister very much wants to see what the advisory group comes up with on that question.
3680. **Mr Lunn:** Fair enough. That is another reserved position, Chairman. It seems to make it more difficult for a controlled primary and a controlled integrated primary to get together.
3681. **Mr Stewart:** I could not claim that it makes it any easier, but I do not think that it makes it any more difficult.
3682. **Mr Lunn:** It allows for a common board of governors in a particular sector but not across sectors.
3683. **Mr Stewart:** You are right, but the existing provision in the 1986 order has the same exclusion for controlled integrated schools. That is why I said that this does not make it any easier, but it does not make it any harder either. It is already hard or impossible.
3684. **Mr Lunn:** It maintains the block.
3685. **Mr Stewart:** That is a fair summary.
3686. **Mr Burns:** It does not stop those two schools merging; it only stops them having one board of governors. A controlled primary school and a controlled integrated primary school can merge, but the fact that they are merging means that they become either one or the other. They really become one controlled integrated primary school on two sites. Do you see what I mean? It does not stop them merging; it only stops them having one board of governors and being two separate schools.
3687. **Mr Kinahan:** You said, Chris, that we would need to change legislation in a major way to get to shared management, but there is some mechanism that allows shared management to happen at the moment, is there not? Is it proportional?
3688. **Mr Stewart:** To a very limited extent. Two maintained primary schools, two maintained nursery schools or two controlled primary schools, for example, could be grouped under a single board of governors.
3689. **Mr Kinahan:** Can maintained and controlled not be grouped?
3690. **Mr Stewart:** No. That is not possible, not for any policy reason but simply because the composition of the boards of governors differs, and, therefore, a single board of governors could not serve both purposes unless we were

- to disassemble and reassemble in a consistent way the composition of boards of governors of all types of schools.
3691. **Mr Kinahan:** That is what I was leading to. Is there not a way of doing it proportionally?
3692. **Mr Stewart:** It could be done. There is no technical impediment to doing that. If the Minister and the Assembly decide that that is the direction in which they want to go, for example, on foot of the sharing education report, we may well look at that. In the early days of RPA, a policy aspiration that was discussed, purely in relation to management, was to have a single type of school to get beyond the confusing spider diagram, which I gave members a few weeks ago, and resolve that into a single and simple approach to the administration of schools. We simply did not have time to do that in the early days. If we had known then that the passage of the Bill was going to take as long as it has, we may have looked at it differently. It would require major legislative change. We would have to strip back all the provisions relating to finance and governance in schools and start again. That may be a worthwhile thing to do, but is not on the current agenda.
3693. **Mr Kinahan:** Is there no mechanism in this clause that opens the door?
3694. **Mr Stewart:** There is not. We have gone as far as we can in that clause with just a quick marginal amendment. To go any further would require fundamental re-engineering.
3695. **The Chairperson:** Are members agreed that we reserve our position on clause 41?
Members indicated assent.
3696. **The Chairperson:** Clause 42 allows for more than one maintained nursery school to be grouped. That is similar to clause 41, although without the additional elements because there are no integrated primaries in the maintained sector, so obviously they did not require —
3697. **Mr Stewart:** Clause 42 is just the maintained sector analogue of the relevant part of clause 41. The same considerations would apply.
3698. **The Chairperson:** So are members content that we agree clause 42?
Members indicated assent.
3699. **The Chairperson:** Clause 43 covers the definition of a controlled school.
3700. **Mr Stewart:** It is a simple definition based on the ownership of controlled schools by ESA. What is significant about the clause is what is not in it. The current definition of a controlled school is a school owned and managed by an education and library board. As we said in relation to clause 41, that will become very different. Clause 41 will put controlled schools on a very different footing, and their relationship with ESA will be very different from their current relationship with education and library boards.
3701. **The Chairperson:** Are members content that we reserve our position on clause 43?
Members indicated assent.
3702. **The Chairperson:** We move to Part 3, inspections. Clause 44 allows for inspectors appointed by the Department to undertake inspection in school establishments funded by the Department of Education (DE) or ESA. The clause requires inspectors to promote in schools and establishments:
“the highest standards of education and of professional practice”.
3703. Inspectors may monitor, inspect and report on any aspect of the establishment, including teaching and learning, management, staffing, equipment, accommodation and other resources. Inspection will not include religious education except where the board of governors agrees, and the Department may give direction under the notorious article 101 for the purpose of remedying any matter identified in an inspection report. I should clarify that the word “notorious” was included by

- me, not the Committee Clerk, so I take the blame for that.
3704. I will move on to stakeholders' comments on the clause. The Irish National Teachers' Organisation (INTO) suggested that the inspectorate should promote partnership with schools and that ETI could not promote high standards when it was also required to report on standards. INTO also suggested that there should be some limit on the aspects of an educational establishment on which inspectors report.
3705. The Western Education and Library Board (WELB) suggested that ETI should be an independent body and have a multidisciplinary workforce.
3706. Comhairle na Gaelscolaíochta (CnaG) wanted changes that would require inspectors to monitor compliance with the duty to facilitate Irish-medium schools.
3707. The Sharing Education Programme suggested that inspectors be required to share best practice.
3708. The Council for Catholic Maintained Schools suggested that governance and leadership be assessed in line with Every School a Good School.
3709. The TRC suggested that the clause be amended to allow RE to be inspected at the request of a board of governors. I thought that a board of governors could request that RE be inspected currently. Is that the case?
3710. **Mr Stewart:** Yes. We are absolutely sympathetic to the views expressed by the TRC, but we do not think that an amendment to the Bill is needed to give effect to that. Unlike other parts of the curriculum, RE can be inspected only with the permission, or at the request, of the board of governors, but to ensure that that happens, it is not necessary to change the legislation. It is simply necessary for a school to signal that it would like, on every occasion that there is an inspection, for it to include RE. The Department will be more than happy to accommodate that.
3711. **The Chairperson:** Inspections, and so on, are covered in clauses 44, 45, 46, 47 and 48. I suspect that the Committee wishes to reserve its position because members still have concerns.
3712. **Mr Stewart:** I happened to be speaking yesterday to colleagues in the inspectorate, and I know that they are very keen to come to the Committee, if the Committee would find it helpful, to explain current and proposed developments on inspection, particularly some of the issues that stakeholders raised on, for example, the importance of, and the correct approach to, the inspection of leadership and governance. If the members would find it helpful, colleagues in the inspectorate are happy to give a presentation.
3713. **The Chairperson:** I am looking at our work programme, and I do not know when we could hear their presentation. The inspectorate has provided us with additional information on what it currently inspects vis-à-vis DEL, and so on. If members wish to hear an additional briefing, I am more than happy to facilitate the opportunity. In the interim, it would be worthwhile for the Committee to be given the information in writing.
3714. **The Committee Clerk:** I think that we have already asked for that, Chair. The request is probably with the Department now. We asked for further written information from the ETI, so it is in the pipeline.
3715. **Mr Stewart:** That is being provided, Chair, and we will expedite that. We are, of course, at the disposal of members. I suggested it merely because one could not fail to notice that it was an area of considerable concern on the part of a number of members. Rather than my giving the information to you second-hand, members might find it very useful to hear directly from senior colleagues in the inspectorate about the role of inspection, its centrality to raising standards and the outcome of inspections. It would be very useful for members to hear from the inspectorate

- on, for example, how inspection has shaped schools that had to enter the formal intervention programme but then exited it and were turned around from being failing schools to being schools on the road to success and recovery. That is, perhaps, best explained by the senior professionals in charge of that process.
3716. **The Chairperson:** The difficulty that we have, members, is that, if we look at the forward work programme for next week, we see that we have a ministerial statement on Tuesday, and we will probably have to be in the House. So we have a difficulty with next Tuesday. The statement is on —
3717. **Mr Hazzard:** The North/South Ministerial Council (NSMC).
3718. **The Chairperson:** We do not have a time for that.
3719. **The Committee Clerk:** It is the first item of business, so it will be at 10.30 am.
3720. **The Chairperson:** Perhaps we could meet after that, at 11.30 am.
3721. **Miss M McIlveen:** Could we not meet before it and then break for the ministerial statement?
3722. **The Chairperson:** We could do that.
3723. **Mr Kinahan:** We normally get briefed just before a ministerial statement.
3724. **Miss M McIlveen:** It is on an NSMC meeting.
3725. **The Chairperson:** Would it not be better to meet after the statement? If the statement is at 10.30 am, we will get a briefing at 10.00 am. There is no point in our meeting at 9.30 am and taking a break at 10.00 am to go to the House. It would be better to meet at 11.30 am after the statement has been made.
3726. **Miss M McIlveen:** If that is the case, we will be able to meet for only an hour, until 12.30 pm.
3727. **The Committee Clerk:** It is a short statement that is scheduled to finish at 11.00 am, but the member is right that it may well be longer than that.
3728. **The Chairperson:** I am quite happy to take a show of hands and do whatever members want to do.
3729. **Mr Stewart:** If it would be more helpful for members to have oral evidence from the inspectorate at the time when you are doing the formal clause-by-clause examination of the inspection clauses, it would be easier to accommodate.
3730. **The Chairperson:** I think that we should have written correspondence, in the interim. Then, if members feel that they need clarity through oral evidence, we would do it. It is the practicality of trying to fit it in around a number of other things that are ongoing.
3731. What do we want to do about Tuesday? The statement will be at 10·30 am.
3732. **Miss M McIlveen:** Could we meet at 9·30 am? That would give us an hour to get into it.
3733. **Mr Kinahan:** Let us try that.
3734. **The Chairperson:** We will go for 9·30 am. The Chair and Deputy Chair will maybe step out at some time to get a briefing before the statement. To be honest, though, it is not that important that we have it before. We could just go to the House and listen to it.
3735. **Miss M McIlveen:** It is an NSMC briefing; it is not as if it is a statement of huge importance.
3736. **The Chairperson:** Let us keep it 9·30 am.
3737. **Mr Hazzard:** Would the Tuesday that we are here all day be too late?
3738. **The Committee Clerk:** When you do formal clause-by-clause scrutiny, that is what you do. You have taken all of your evidence, and you have made up your mind. I would not hear evidence on the same day. You need time to think about it and take a view.
3739. **The Chairperson:** OK.
3740. **The Committee Clerk:** Are you reserving your position?
3741. **The Chairperson:** Yes. That means that it is Part 4 and all of those clauses.

3742. **The Committee Clerk:** It is Part 3 that you are reserving your position on, and we are moving to Part 4.
3743. **The Chairperson:** Yes. Clause 49 deals with the interpretation, and it covers the functions of the Northern Ireland Council for the Curriculum, Examinations and Assessment. Clause 49 defines certain terms used in this Part of the Bill. Chris, do you want to comment?
3744. **Mr Stewart:** I have little to say on that. It is very much a technical clause. Indeed, the whole of Part 4 is a re-enactment and colossal tidying-up exercise. Members will recall that the decision was taken not to transfer the functions of CCEA to ESA. It is to remain a separate body, for the time being, although the Minister may revisit that in due course. The current provisions on the CCEA functions were long overdue. It required a whole raft of technical and tidying-up amendments, which we had not done, because it had been the intention that it would have transferred into ESA. Now that that is not the case, we need to get the tidying up done. This is one of those instances where, as I said to Trevor yesterday, it passes the tipping point at which the degree of change required is such that the Office of the Legislative Counsel advised that it is easiest to repeal the existing provisions, start again and tidy them up. There are no major policy changes in any of the clauses.
3745. **The Chairperson:** Are we aware of any amendments that may, or could, come from DEL? Obviously, the functions apply to DEL as much as they do to DE.
3746. **Mr Stewart:** We worked very closely with DEL on this Part of the Bill, and I am confident that the provisions would meet with the approval of the Minister for Employment and Learning. At this stage, we are not aware of any amendments coming forward.
3747. **The Chairperson:** Agreed?
Members indicated assent.
3748. **The Committee Clerk:** Are members agreeing to clause 49?
3749. **The Chairperson:** Yes.
3750. Clause 50 allows CCEA to conduct designated examinations, specify exam papers and charge fees. The Western Education and Library Board suggested the clause be amended such that CCEA would no longer retain responsibility for assessing itself on pupil attainment. The Catholic Commission suggested changes that would require CCEA to ensure that qualifications were portable to other jurisdictions. The Catholic Heads Association suggested in oral evidence that CCEA should be non-profit-making.
3751. Have you any comments on the issues that were made by those organisations?
3752. **Mr Stewart:** I am not certain that we entirely understand the suggestion that CCEA is responsible for assessing its own performance. We do not think that it is. As a non-departmental public body, it is accountable to the Minister, who assesses its performance. If he is not satisfied, he will soon let it know.
3753. **The Chairperson:** Yes. And this Committee.
3754. **Mr Stewart:** Absolutely.
3755. The portability of qualifications is extremely important, but it is provided for in the Bill at clause 54(1)(c).
3756. You mentioned non-profit-making. There is always scope for debate as to whether any public body, in offering a service, should charge for it. It takes you to a very practical consideration. If CCEA were not to charge, or were to charge less for what it provides, the cost of provision would have to be met from somewhere else within the education budget. Members are aware that the largest part of the education budget is known as the aggregated schools budget, so it could mean taking money from schools and giving it to CCEA. Schools might argue that that is already the case, and that they have to pay for the examinations, but we do not think that the changes proposed would bring any benefit.

3757. **The Chairperson:** This goes back to a number of discussions that were held some time ago with regard to CCEA taking a decision, for example, to withdraw from certain jurisdictions. It withdrew from England. Some would argue that it took that decision purely on a commercial basis, as opposed to an educational basis. It is about balance and whether, first and foremost, its decisions are driven by an educational concern. The young people of Northern Ireland should be its primary responsibility. Any other educational provision in any other jurisdiction — I am not being disrespectful — should not be treated with the same degree of priority as the needs of pupils in Northern Ireland. That is the worry associated with the balance between CCEA's commercial and educational provision. That is the issue that some people are worried about.
3758. **Mr Stewart:** I take your point, Chair, and I do not think that CCEA colleagues would disagree with what you said. Without wishing to speak for them, I think that they would say that the decision to pull out of England, as it were, was a commercial decision but one that reflected the educational reality on the ground there, given all the changes that are taking place in England. England is a market that is likely to be less open to CCEA than it has been in the past, at least until things settle down. CCEA made the commercial decision that, rather than invest time and expertise in attempting to market qualifications and examinations that are less likely to be taken up in England than they currently are, it would do exactly as you suggest and concentrate on the home market and on the needs of children and young people in Northern Ireland. Yes, it was a commercial decision but one that is grounded in educational reality and ought to lead to educational benefit here.
3759. **The Chairperson:** Part 4 has clauses 49 to 54. Other than 49, which are new? Are they all new?
3760. **Mr Stewart:** They are all new, but they are all a re-enactment of an existing block of clauses in the 1998 Order. The degree of tidying up is quite significant. The Office of the Legislative Counsel will have grouped some of the provisions slightly differently in the current legislation. It would be quite difficult for members to sit down with the existing order and the provisions of the Bill to try to read across from one to the other. Let me assure you, Chair, there are no hidden significant policy changes in there. It is a technical re-enactment of existing clauses.
3761. **Mr Lunn:** Does CCEA in Northern Ireland undertake any activities that could be regarded as commercial, outside of its responsibility to —
3762. Where is it? What clause are we on? Is it 50?
3763. **The Chairperson:** We are on clauses 49 through to 54.
3764. **Mr Lunn:** Does it do anything outside of its functions, as described in the Bill, that could be regarded as profit-making?
3765. **Mr Stewart:** Not that I am aware of, Trevor, but I would have to say that I am not particularly familiar with the full range of what CCEA does. Rather than give you an inaccurate answer, I will perhaps check that with CCEA colleagues and give the Committee a written answer on the range of things that it does.
3766. **Mr Lunn:** I cannot see any harm in it. Somebody, by implication, referred to it as a profit-making organisation. I imagine that it sets its charges at a level that covers the cost, and, if there is a small surplus, it is ploughed back in. If it has activities beyond —
3767. **Mr Stewart:** That is exactly the case. The term profit-making is slightly misleading when it comes to the public sector. You are absolutely right: in most, if not all, instances, it is ploughed back in. It is not that we have any choice. The Department of Finance and Personnel (DFP) does that for us. I think that the technical term that DFP uses for any

- profit that is made on a trading account is appropriation-in-aid. In other words, it just nets that off our budget.
3768. **Mr Lunn:** If it were able to find commercial or private activities that produced a profit and ploughed that back in, that would be a benefit; it would not be a downside.
3769. **Mr Stewart:** It would be a benefit. It would absolutely be ploughed back in. I assure members that there is no prospect whatsoever of CCEA or anyone in CCEA making a personal profit out of any of the activities.
3770. **The Chairperson:** I do not think that we were making that assertion, although we have concerns about accountability. We need to remind members about a private jet that, on one occasion, was acquired by CCEA. Where I was coming from —
3771. **Mr Stewart:** For the benefit of the record, Chair, it was chartered by CCEA; it was not acquired by CCEA. [Laughter.]
3772. **The Chairperson:** Yes, to be accurate. Thanks, Chris.
3773. **Mr Stewart:** The crime was the lesser one.
3774. **The Chairperson:** Remember that CCEA was the organisation that handed back a considerable amount of money in the previous two Budget rounds. There is an issue about how much money it is getting and how it is being spent. I appreciate that Chris clarified the point around the profit. When we talk about the profit element, it is not about individuals profiting; it is about how the organisation is collecting and using money.
3775. **Mr Craig:** I find the profit-making thing intriguing. I take it that the whole aspect of this is that, if it is not making a profit, it is breaking even. Does it break even with every sector in education? If that is the case, are there different costs to every sector in the organisation?
3776. **Mr Stewart:** I do not know, Jonathan. I would have to research that and come back to you. I confess that it is not an area in which I have any particular expertise. Generally, in the public sector, profit-making is a misnomer. A number of public sector organisations have what are known as trading accounts. In other words, they operate on a commercial basis, but it is not to make profit. They must, of course, cover their costs. Any income in excess of that is treated as an appropriation-in-aid by DFP. It will thank us for our efforts and regard that as a slight relief on any pressure in the Northern Ireland block, but I am afraid that it does not allow us to squirrel the money away to use it as we see fit. It would be treated as an appropriation-in-aid, and it would probably be netted off the Department's budget.
3777. **Mr Craig:** I would appreciate you getting back to us with some information on that. I note that, in all these clauses, you are putting a legal requirement on it to cover one specific aspect of our education. Will that be treated differently from the rest?
3778. **Mr Stewart:** Again, I am afraid that I do not have sufficient knowledge of how CCEA operates to be able to answer that. However, if members would find it helpful, we could bring forward a paper to you that sets out the basis on which it operates.
3779. **The Chairperson:** There is another issue that comes out of all this. I was interested to see that we did not get more of a response about the whole issue of CCEA being the regulator, the assessor and the provider. Some have always argued that there is a correlation of functions that should be separated because you cannot, in a very crude sense, be poacher and gamekeeper at the same time. However, those functions are all contained in clauses 49 to 54. It might be useful if CCEA clarified the whole issue of being a regulatory body, being an examination body, being in the commercial world of providing exams and being an assessor. Sometimes, the picture gets very confused.
3780. **Mr Stewart:** If the Committee would find it helpful, we will bring to you a policy paper on that. To ensure that CCEA cannot in any way be the poacher and

- the gamekeeper, the Department would prepare that paper rather than CCEA. We can certainly address the issue of the perception of any conflict of interest between its role as an examinations body and an accreditor of awards.
3781. **Mr Lunn:** Can I just get clarification on what Jonathan said? I assume that you were talking about the Irish-medium sector, but it is not the only one mentioned. It only seems to come in under the heading “Discharge by the Council of its functions”. It says the council has to “have regard to” and mentions the requirements of industry, commerce and the professions, the requirements of persons with special learning needs, then the requirements of the Irish-medium sector.
3782. **Mr Craig:** I said some. I did not —
3783. **Mr Lunn:** No, you said one. You also said that it was all through the clauses, but that is the only place that I can find it.
3784. **Mr Stewart:** Forgive me, Jonathan, I think that I misunderstood your question. In relation to those particular requirements, a bit like clause 2(5), they are needs based. They are not rights based. It is recognising that people studying in Irish and taking examinations in Irish and people in special education have particular needs that require CCEA to discharge its functions in particular ways. Those stem from the needs of the children and young people rather than the position of any particular sector or type of school.
3785. **Mr Craig:** I accept that, Chris. I have no argument about that. I am just intrigued. Obviously, there is a cost involved in that. Is that reflected in what CCEA charges that sector?
3786. **Mr Stewart:** I do not know. I would have to check that.
3787. **The Chairperson:** OK, members. Chris will provide a paper for us. Do we want to reserve judgement on clauses 50 to 54?
3788. **The Chairperson:** Part 5 brings us to clause 55, which relates to the protection of children and young people. The clause places a duty on ESA to ensure that its functions are exercised with a view to safeguarding and promoting the welfare of children. The Western Education and Library Board asked if additional resources were to be made available to ESA to carry out that duty, which, obviously, is a pertinent question to ask, given the onerous task involved with going into the area of child protection, which is a very important and sensitive area.
3789. **Mr Stewart:** It is an understandable question, but I am very surprised at the Western Board asking it. I would have thought that it would know the answer. The administrative budget for ESA will be set by the Department. It will be for ESA to determine within that how it uses those funds. The Western Board will be well aware that there will be no additional resource provided for that.
3790. **Miss M McIlveen:** What is the relationship between the Department and the Safeguarding Board?
3791. **Mr Stewart:** I will check, Michelle, to be absolutely certain. There is certainly a reference in the relevant clauses to the Safeguarding Board. Peter might correct me if I get this wrong, but I think that ESA will be a member.
3792. **Mr Burns:** Yes, I think it will be a member.
3793. **Mr Stewart:** ESA will be a member. There are direct links between the relevant provisions and the Safeguarding Board Act.
3794. **Miss M McIlveen:** Can you bring us back those references?
3795. **Mr Stewart:** Yes.
3796. **The Chairperson:** I apologise, Chris, if this is an area that you cannot give us a definitive answer on. In the whole MARAC process, that is, the multiagency approach to ensuring that there is sharing of information, there has been an ongoing issue between the

Members indicated assent.

- Department of Justice, the PSNI and some other agencies around the sharing of information, particularly around the issue of domestic violence. Sadly, that impinges on children and families. Where would this sit with the power that there will be for ESA to be part of that overall process? I know that there is an ongoing issue about the Department of Justice signing off in regard to a protocol on sharing information.
3797. **Mr Stewart:** I confess, Chair, that takes me well beyond an area in which I have any expertise and knowledge. What I can say is that buried within schedule 7 will be amendments to the two pieces of legislation that deal with the Safeguarding Board and related matters. It will obviously transfer any references to education and library boards to references to ESA. It will also ensure that ESA is named at the appropriate points in the Safeguarding Board legislation. It is, therefore, subject, for example, to the need to have regard to guidance that will be produced on these matters. Beyond that, I am afraid that I will have to check with colleagues and come back to you.
3798. **The Chairperson:** Members, are we happy to agree, or do we want to wait until we get information back to clarify the issues around the Safeguarding Board and the protocol?
3799. **Mr Kinahan:** I am happy to agree.
3800. **Miss M McIlveen:** I am happy enough to agree, but the information would be helpful.
3801. **The Chairperson:** OK. Do we agree to clause 55?

Members indicated assent.
3802. **The Chairperson:** Clause 56 relates to the duty on providers of funded preschool education to safeguard and promote the welfare of children. Members, we generally welcomed these duties given the nature of the issue being addressed. However, this clause places a duty on providers of preschool education to safeguard the welfare of children and produce a written statement of protection measures. DE or ESA will issue guidance, and the provider must follow direction from ESA or the Department in this regard. Does that include all providers, whether they be voluntary, community or statutory?
3803. **Mr Stewart:** Yes, Chair. What we have tried to do —
3804. **The Chairperson:** That is a change.
3805. **Mr Stewart:** It is. Throughout these clauses, we have tried to cover every organisation that has a part in the delivery of education, including youth services and early years services. It is relatively straightforward to do that when they are statutory organisations. We simply place a duty on those organisations and make them amenable to ESA's power of direction on child protection matters. It is a little bit more difficult when they are non-statutory bodies. We have to do it by, for example, placing a duty on ESA to make it a condition of grants for non-statutory bodies that they have appropriate child protection arrangements in place. We have to acknowledge that that is a lower degree of safeguard, but it is the best that we can achieve in legislation, given that these are non-statutory bodies.
3806. **The Chairperson:** Does this have implications for the Health Department with regard to, for example, Sure Start provision and so on? It says:

"It is the duty of a person providing funded pre-school education for any children to safeguard and promote the welfare of those children at all times when those children are -

(a) on relevant premises; or

(b) in the lawful control or charge of that person or relevant staff."
3807. That should cover all situations where children are in a formal setting.
3808. **Mr Stewart:** Yes, it will cover everything within, as it were, the education family. Our DHSSPS colleagues are very cognisant of the need for similar requirements on any organisations that they are responsible for, not least under the auspices of the Safeguarding Board.

- The two Departments will continue to liaise very closely. We will expect ESA to liaise very closely with organisations in the health service field to ensure that we do not leave any gap in the system or any organisation that slips between the slats without this sort of requirement being placed on it.
3809. **The Chairperson:** It is right to place on record that the NSPCC also welcomed these particular clauses.
3810. **Mr Kinahan:** Does it have a link to the justice side as regards making sure that there is enough resource for everyone to be assessed or checked?
3811. **The Chairperson:** Does that cover the issue about the protocol? Is that —
3812. **Mr Stewart:** Sorry, I missed Danny's question.
3813. **Mr Kinahan:** I am concerned that, by quite rightly creating that duty, a whole lot more people will have to be assessed through the police system or another system. Does it have a link that we should be thinking about to the justice system?
3814. **The Chairperson:** It probably does.
3815. **Mr Stewart:** It might, and it might not. There would be a significant resource implication only if there were people in specified posts today who were not subject to the appropriate criminal record checks. We would hope that that is not the case. To whatever extent that it is the case, the provisions in the Bill should reveal any shortcomings in the child protection arrangements that are in place. I suppose that that could lead to more criminal record checks being requested. If that is the case, the challenge for us is to make sure that that is resourced. I do not think that we could, in all conscience, not proceed in this way, because that would be to leave children vulnerable.
3816. **Miss M McIlveen:** How different are the provisions from what you currently practice in the Department?
3817. **Mr Stewart:** They are really very different, Michelle. The reason why we have such a range of provisions here is that, in preparing the previous Bill, we thought that there were very significant gaps in the responsibilities and duties across education. Those were fairly clear and very well defined in relation to schools. However, once you got beyond schools, the position was much more patchy. We were really quite concerned that there were gaps there. I am afraid that we know from experience what happens when you are dealing with the very worst issues in child protection. Determined paedophiles who are looking for opportunities to exploit children will look for weaknesses and loopholes in the system. If there is a part of the system that is highly regulated, they will look for a part that is less highly regulated. So, we thought it very important that we have all the gaps filled, comprehensive coverage, clarity of responsibility and clarity of responsibility for ensuring that duties are complied with. We think that we will achieve that through this set of provisions.
3818. **Miss M McIlveen:** I welcome how seriously the Department is taking that issue.
3819. **The Chairperson:** That covers clause 56. We have agreed clauses 55 and 56. OK?
3820. **Mr Kinahan:** Yes.
3821. **The Chairperson:** Clause 57 would place a duty on the ESA and the Department, where a grant is made for educational youth services, to ensure that the conditions ensure that children's welfare is safeguarded. Again, that is ensuring that that is delivered. Agreed?
- Members indicated assent.*
3822. **The Chairperson:** Clause 58 amends the 2003 Order to allow the ESA to give direction to the boards of governors in relation to a duty to safeguard or promote the welfare of children. Again, no stakeholders commented, other than the NSPCC, which welcomed the clause in this part of the Bill.
3823. **Mr Stewart:** Members will forgive me for repeating that this is the only area

- of the Bill where we propose to give the ESA the power to direct a school.
3824. **The Chairperson:** I think that that should be noted by members. Sometimes, concerns are raised about what the ESA will or will not be able to do. That is the only place in the Bill where ESA has the power of direction. Other than, that is, going back to the Department and asking the Department to use —
3825. So, it is not really true that it is the only place. It is the only place that it is given the power of direction —
3826. **Mr Stewart:** It is the only example of that particular power being placed directly in the hands of
3827. ESA. You are quite right, Chair. In every other instance where ESA has an insoluble problem, it will have to come to the Department. In this case, we felt that, as the issue is one of child welfare or child protection, if a problem is detected, it should be corrected expeditiously without ESA having to go anywhere else.
3828. **The Chairperson:** Thanks, Chris. Agreed?
3829. **Mr Lunn:** What about the power to do anything that appears to it to be conducive or incidental to the discharge of the functions?
3830. **Mr Stewart:** Clause 22?
3831. **Mr Lunn:** Yes.
3832. **Mr Stewart:** I do not see clause 22 as having a particular bearing on this.
3833. **The Chairperson:** Do we agree to clause 58?
Members indicated assent.
3834. **The Chairperson:** Clause 59 required the boards of governors and providers of preschool education or providers of education and youth services to co-operate with ESA in the safeguarding and promotion of the welfare of children. Again, there were no comments from stakeholders, but the clause was welcomed by the NSPCC. Following on from Michelle's point, how different is that from the current practice of
- that duty? Boards of governors have a duty to ensure that they have a child protection policy.
3835. **Mr Stewart:** There are very clear duties on boards of governors today in, I think, articles 17 and 18 of the 2003 Order. It is the requirement to co-operate that is the new thing. Again, we have seen in the past that it is not even enough to ensure that every organisation that plays a part has duties. I am taking up your point, Chair, and Michelle's. In the past, things have gone wrong because organisations have had a little part of the picture but have not shared that information with other organisations. Because of that, somebody has been able to exploit the asymmetry of information, and that is why we think that the duty to co-operate is very important.
3836. **The Chairperson:** Are members agreed?
Members indicated assent.
3837. **The Chairperson:** That brings us to Part 6, Miscellaneous and Supplementary. Clause 60 amends the 1989 Order to set out the Department's general duties, which includes the promotion of education for children and young people. The clause also sets out the duty of DEL to promote further and higher education. Stakeholders commented as follows: CnaG wanted a duty on the Department to promote Irish medium schools; CRC wanted a duty to promote shared education; and NICIE wanted a duty to promote integrated education.
3838. **Mr Lunn:** I note that the Department's response appears to be that the duty to encourage and facilitate is already there. That is a different word, and I think that that is what they are getting at. The Assembly passed a private Member's motion a couple of years ago to request that the Minister consider including "promote" in the duty towards integrated education — to promote, encourage and facilitate. I am just making that comment. I think that that is what they are all getting at. They want "promotion" included in there as well as "encourage and facilitate".

3839. **The Chairperson:** Clause 60 says, “DEL” —
3840. **Mr Lunn:** It is both. It says, “the Department and DEL”.
3841. **The Chairperson:** Sorry, yes. It is:
“the duty of DEL to promote further and higher education in Northern Ireland”.
3842. **Mr Lunn:** I thought at first that it was a duplication of general duties —
3843. **The Chairperson:** Of clause 2 —
3844. **Mr Lunn:** — but it goes beyond that.
3845. **Mr Stewart:** It is very similar to clause 2. We have deliberately tried to align the two things. You will see that the general duty of education and library boards in current legislation is similar in many ways to clause 2, and we have expanded on it a little bit in clause 2 for ESA. However, the current general duty of the Department is a very modest thing indeed. It is similar to the wording proposed there for DEL. The Minister thought that it was appropriate that we should line up the general duty of the Department and the general duty of ESA. We are in the same business. The outcomes that we are trying to secure are similar, and that should be reflected in the fundamental duties. That is why what is proposed there is really very different indeed compared with what we have now. It is a great deal longer and more detailed.
3846. **Mr Kinahan:** Should it not be and/or? I am trying to think of something legal that happened a few years ago, which was that if you put the Department and DEL, you are putting it jointly.
3847. **Mr Stewart:** No, they are two separate duties. They happen to be grouped in the same clause, because they are grouped in one provision today in the 1989 Order, but they are two quite separate duties. Our Minister has determined the duty that should apply to our Department. The DEL Minister has indicated what he wishes to see as the duty on DEL.
3848. **The Chairperson:** Clause 60(3)(f) states:
- “to secure the effective and efficient execution of their functions by ESA and other bodies on which or persons on whom powers are conferred or duties imposed under the Education Orders.”*
3849. Can you translate that into Queen's English please, Chris?
3850. **Mr Stewart:** In English, Chairman, it means that we have to manage ESA and CCEA.
3851. **Mr Lunn:** If there was a mind to include “promotion” in relation to, let us take as an example, integrated education —
3852. **Mr Stewart:** Purely at random.
3853. **Mr Lunn:** — would this be the appropriate place for it, or would the appropriate place be somewhere else in the Bill?
3854. **Mr Stewart:** It could be the appropriate place, Trevor. You would have two choices. If the policy decision were made, first of all, to use the word “promote”, you could simply amend the duty in article 64 of the 1989 Order to add “promote” or to replace “encourage and facilitate” with “promote”. You could do it that way, or you could repeal the duty in article 64 and add a new duty to the general duty under this clause. You could do it either way.
3855. **Mr Lunn:** This is the clause that it would be in.
3856. **Mr Stewart:** Yes.
3857. **The Chairperson:** So, will we reserve a position on this one?
3858. **Mr Lunn:** Very much so.
Members indicated assent.
3859. **The Chairperson:** Clause 61 amends the 1986 Order to allow DE, DEL and DCAL to pay grants to persons for various services or relevant research. CnaG wanted the clause to allow grants to be paid specifically to bodies that promote Irish-medium education. NICIE wanted the same for bodies that promote integrated education. Is that an additional clause?

3860. **Mr Stewart:** It is, Chair. In relation to the amendments, the world is forever asking us for things that they already have. This is a re-enactment of an existing provision, again, for technical, tidying-up reasons. Article 115 of the 1986 Order is the general provision that we have to pay grants to various bodies. It stems from a time when there was a single Department of Education, which is now split into DE, DCAL and DEL. Over the years, the clause has needed some tidying up. Again, it is beyond the tipping point where legislative counsel felt that it was best to repeal it and re-enact it. In doing so, he has actually been able to split it into three. Although it is one clause, it sets out grant-making powers for us in DE and for DCAL and DEL.
3861. The significance of this particular power for DE is that it is the one we will use to grant aid two of the sectoral bodies. So, it is the power that will allow us to grant aid the sectoral bodies for the controlled sector and Catholic education. We do not need a new, specific power to grant aid CnaG or NICIE, because we already have specific powers in the 1989 and 1998 Orders to do that. If, for some reason, we did not and those powers did not exist, we could actually fund CnaG and NICIE using the existing article 115 or the re-enacted power that is proposed here. However, the converse is not the case: we could not use the article 89 power to fund the controlled sector body. The article 89 power is specifically for organisations that exist to promote Irish-medium education. The corresponding power for integrated education is to fund organisations to promote that form of education.
3862. So, the combination of the two existing powers and the re-enactment of this one will give us all the tools that we need in the box to fund sectoral bodies.
3863. **The Chairperson:** Are there any comments? Are we agreed?
- Members indicated assent.*
3864. **The Chairperson:** I am conscious that we have visitors in the visitors' gallery, as we call it. You are very welcome, students. Do you wonder what we are doing? We are going through the Education Bill, which is a Bill to introduce an organisation called ESA. It has 66 clauses. We have to go through them all, clause by clause, page by page. Officials from the Department are here to answer queries, keep us right and give us opinions. Members can then decide whether they have to amend clauses. You are very welcome. We trust that you will enjoy your time in Stormont today.
3865. **Mr Stewart:** Chairman, you have me very worried: there are 69 clauses in the Bill.
3866. **The Chairperson:** I am sorry. How many did I say that there were, Chris?
3867. **Mr Stewart:** Perhaps you have taken three out when I was not looking.
3868. **The Chairperson:** Well, we have not got to that stage yet. Maybe that will happen.
3869. That takes us to clause 62. 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 the schemes of employment and management that are to be referred to it. The Committee Clerk has advised that there is an error on the clause-by-clause table. The Committee had, in fact, previously agreed that it was content to review clause 62. Can the Department clarify whether the Minister is to bring forward an amendment to the clause?
3870. **Mr Stewart:** The Minister intends to do so. He has written to the First Minister and the deputy First Minister, indicating that he will propose an amendment to give OFMDFM complete responsibility for the tribunal. OFMDFM will appoint the members; will bring forward the subordinate legislation that will govern the tribunal; and will be the sponsoring Department for the tribunal. So, it will be completely independent of the Department of Education, which will have no role in the tribunal whatsoever.
3871. **The Chairperson:** Clause 62 will be amended, then, so we will have to

park it. The Committee will reserve judgement on it. Is that OK?

Members indicated assent.

3872. **The Chairperson:** Clause 63 is about sectoral bodies. The 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 interests of schools of that description.

3873. Some of the unions wanted sectoral bodies to be abolished; others wanted sectoral bodies to represent particular interests, such as Irish medium, voluntary grammar or young people. Some stakeholders wanted amendments that would clarify the role of sectoral bodies and the relationship between them. The Catholic commission wanted amendments to clearly set out how the relevant sectoral bodies should be identified. The TRC wanted a requirement for sectoral bodies to work together and to promote shared education. The Catholic commission proposed an amendment to the Bill so as to include a definition of a Catholic school. CnaG appeared to be seeking a separate legal entity for Irish-medium schools, as distinct from Catholic maintained or controlled schools. So, we have a raft of opinions and views in relation to clause 63.

3874. **Mr Stewart:** I cannot think why, Chairman.

3875. **The Chairperson:** Do you want to comment, Chris?

3876. **Mr Stewart:** I will make a couple of points, and then I would be happy to deal with any of the individual suggested amendments, if members would find that helpful.

3877. First, I make a general point. A number of the amendments suggest, or are motivated by the suggestion, that we should regard sectoral bodies as though they were statutory bodies, defined in legislation with statutory functions, set out in legislation and with membership and duties in legislation. That is really very different from the policy concept

that is set out in the Bill and, indeed, reflected in the previous Bill. These are non-statutory organisations. They do not have any statutory functions, and it is not the Minister’s policy to specify or name any of them in legislation. So, our relationship with them will be similar to the relationship that we have with non-statutory bodies. We will grant aid them to do certain things. We will consult them, regularly, about the discharge of the Department’s functions, as will ESA. From time to time, it is appropriate to refer to that consultation in the Bill, and members will have seen that in various clauses. However, they are not intended to be statutory bodies, and, therefore, the Minister does not propose to legislate in relation to the sectoral bodies as though they were statutory.

3878. **The Chairperson:** In the previous clause, reference is made to article 115 of the 1986 Order. Article 115 of the 1986 Order would remain, but, to substitute for “the Department”, it is broken down into the Department, DEL and DCAL. Is that right?

3879. **Mr Stewart:** It will still be article 115, but it will be a new one. The effect of the previous clause is to take out the existing article 115 and replace it with a new one.

3880. **The Chairperson:** Then, we come to clause 63, and a sectoral body means a body:

“to which grants are paid under Article 115 of the 1986 Order, Article 64 of the 1989 Order or Article 89 of the 1998 Order”.

3881. Where do we bring in the change that we are proposing with regard to this Bill? Is it not mentioned?

3882. **Mr Stewart:** I am sorry, Chair; I do not fully understand your question.

3883. **The Chairperson:** I may be getting lost. If clause 61 is to change article 115 of the 1986 Order, does that not technically mean that it has to be “as amended”, and that should be reflected in clause 63(b)?

3884. **Mr Stewart:** No. It does not need that.

3885. **The Chairperson:** It does not? So, we are changing it, but we are still saying, at clause 63, that we refer back to article 115 of the 1986 Order?
3886. **Mr Stewart:** When you read “article 115”, you can read in your mind the words “as amended”. You can take it that any reference, anywhere else in legislation, to article 115 is a reference to it as it sits at any given time in the statute book.
3887. Amending provisions can be tricky things. However, what I generally say to people is that it is best to regard them as something that does its work and moves on. Its work is done. The clause that will replace article 115 will do its work. It will introduce a new article 115, and then we can forget about it, because its work is done.
3888. **The Chairperson:** OK. Are there any comments? Are we agreed on clause 63?
3889. **Mr Lunn:** For clarity, is it just three organisations under clause 63(b): one under article 115 of the 1986 Order, one under article 64 of the 1989 Order, and one under article 89 of the 1998 Order? That would be integrated education, CnaG and —
3890. **Mr Stewart:** The four bodies that are proposed at present are a sectoral body for the controlled sector and a sectoral body for Catholic education, with CnaG continuing its role as the sectoral body for Irish-medium education and NICIE continuing its role as the sectoral body for integrated education. There are no plans at present for any other sectoral bodies, but the legislation does not rule that in or out. It is an enabling provision, so there could be as many sectoral bodies as the Minister of the day decides.
3891. **Mr Lunn:** In response to the GBA’s suggested amendment, the Minister was quite firm that he has no plans to establish a sectoral body for voluntary grammar schools. That is the main contentious one.
3892. **Mr Stewart:** That is the Minister’s view, as I understand it.
3893. **Mr Kinahan:** I think that we may want to reserve judgement on this clause.
3894. **Mr Lunn:** However, the Minister could do that under clause 63(a).
3895. **Mr Stewart:** He could change his mind if he was persuaded of the case for a sectoral body for any particular group of schools.
3896. **Mr Lunn:** Grant-aided schools have a particular and very specific description.
3897. **Mr Stewart:** Yes.
3898. On a related point, Chair, I neglected to answer your earlier reference to two of the suggested amendments from Catholic education and Irish-medium education. Those are really around definitions of “Catholic school” and “Irish-speaking school”. The Minister is minded to bring forward amendments on both of those. So, we would include a definition of Catholic school and a revised definition of Irish-speaking school in the Bill. That is precisely to answer Trevor’s point. Sectoral bodies are for schools of a particular description, so it is important that we get the particular descriptions right. We will include those in the Bill.
3899. **The Chairperson:** OK. Are there any other comments?
3900. **Mr Kinahan:** I think that we should reserve judgement on this clause.
3901. **The Chairperson:** OK. We will reserve on clause 63. We are almost like auctioneers. If that is the case, you really should be in the chair, Danny.
3902. **Mr Kinahan:** The value involved —
[Inaudible.]
3903. **The Chairperson:** That is way above my league.
3904. Clause 64 allows DE to make any supplementary, incidental, consequential, transitory or transitional provisions as it considers appropriate to give full effect to the legislation. This is sometimes described as a Henry VIII clause. Is that correct?

3905. **Mr Stewart:** It could be an example of a Henry VIII clause, Chair. Just to remind members, the history of that stems from the Proclamation by the Crown Act 1539, which was slightly before my time in education. In that Act, the aforementioned King Henry decided that the business of making legislation by Parliament passing Bills to him was all very well but that it would be much more expeditious if he could simply make legislation by royal proclamation. The term has been adopted by parliamentarians as a form of slang. Any piece of subordinate legislation that can amend primary legislation is referred to as a Henry VIII power, because it risks a Department taking on to itself powers similar to those that King Henry thought he ought to have.
3906. Leaving aside that slight digression, this is a fairly standard provision that you would see in any Bill.
3907. **The Chairperson:** It was in the Libraries Bill.
3908. **Mr Stewart:** Yes; it was. Counsel adds such clauses almost automatically to any Bill. It recognises that, when you move to the point of implementing primary legislation, sometimes you need to do things on a temporary or interim basis, simply because the world is so different on day one, as a result of legislation, than it was on the day previous to that. That is why it has been included. It absolutely does not give the Department licence to run off and make vast swaths of legislation that the Assembly has not allowed for.
3909. **The Chairperson:** Agreed?
Members indicated assent.
3910. **Mr Lunn:** What is the difference between transitory and transitional?
3911. **Mr Stewart:** Trevor, I confess that I would have to ask the Office of the Legislative Counsel for an explanation of that.
3912. **Mr Lunn:** Do not bother. I just noticed it there.
3913. **The Chairperson:** Clause 65 provides that all regulations made under the legislation shall be subject to negative resolution procedure; with the exception of supplementary, incidental, consequential, transitory or transitional provisions set out in clause 64 and regulations under clause 62 to appoint a tribunal, which require affirmative resolutions.
3914. **Mr Stewart:** And it is precisely because, otherwise, they would be Henry VIII powers. So, the Assembly would no doubt feel that it ought to exercise the affirmative method of control over those —
3915. **The Chairperson:** Yes.
3916. **Mr Stewart:** — to stop us running off and doing mad things.
3917. **The Chairperson:** Agreed?
Members indicated assent.
3918. **The Chairperson:** Clause 66 defines the terms used in the legislation. The GBA suggested an amendment that would include the heads of agreement as a schedule to the Bill. Any comments, Chris? I think that its was the only response.
3919. **Mr Stewart:** It is unusual, Chair, for anyone to suggest amendments to an interpretation section. This is the most technical of all the Bill's clauses. We understand the GBA's intention. It is not the Minister's policy to do that. From a technical standpoint, I would advise that, as I have said before, the heads of agreement is a political document. It was not written to have the direct force of law, which would become the case were it to be incorporated into the Bill. That would cause quite significant difficulties around its interpretation and application.
3920. **Mr Kinahan:** Given that it is being or may be amended, do we not have to park this?
3921. **The Chairperson:** OK. We can reserve our position.
3922. **Mr Lunn:** Yes; for sure.

3923. **The Chairperson:** Yes; is that OK?

Members indicated assent.

3924. **The Chairperson:** Clause 67 contains provisions for minor and consequential amendments and repeals. It revokes various references to education and library boards and education orders. It cleans and tidies things up. Is clause 67 agreed?

Members indicated assent.

3925. **The Chairperson:** Clause 68 contains provisions for the commencement of the legislation. Some provisions, such as the tribunal being set up and the transfer of staff to ESA, happen after Royal Assent. Other provisions come into effect only when the Department decides. I think that that will move rapidly if the Bill is agreed.

3926. **Mr Stewart:** That is the intention. In this instance, as members would probably recognise, a greater proportion of the Bill would be commenced by commencement order, rather than automatically as would usually be the case. That reflects the fact that there is a considerable job of work to be done in preparation for the move to ESA. Gavin and his team are working very hard on that. However, we need to ensure that the preparations for ESA are sufficiently advanced before we trigger commencement of the Bill. The provisions that will start the day after Royal Assent are those that facilitate that preparatory work; for example, the clause that allows the Department to make the transfer schemes. That does not mean that the transfers take place then; it means that we can make the schemes, do the necessary consultation with staff and boards of governors, and have that ready to go on the day that ESA is established.

3927. **The Chairperson:** OK. Agreed?

Members indicated assent.

3928. **The Chairperson:** Clause 69 is the short title of the legislation, which may be cited as the Education Act (Northern Ireland) 2012. That will be changed —

3929. **Mr Stewart:** Of course, we will have to propose an amendment to that.

3930. **The Chairperson:** There will have to be an amendment, but we will agree that. At least we know that that is one amendment that we can all agree on.

3931. **Mr Stewart:** And I am extremely hopeful, Chair, that —

3932. **The Chairperson:** Or maybe not; it could be 2014. *[Laughter.]*

3933. **Mr Stewart:** I was going to say that I am extremely hopeful that it will be 2013.

3934. **The Chairperson:** Will we reserve our position?

3935. **Mr Stewart:** We will be at the Assembly's disposal on that.

3936. **The Chairperson:** Agreed?

Members indicated assent.

3937. **The Chairperson:** I propose that, rather than start into the schedules, we now go through Committee correspondence and come back to the seven schedules on Tuesday, which will give members an opportunity —

3938. **The Committee Clerk:** There are eight schedules.

3939. **The Chairperson:** How many are there? The eight schedules, and I will soon get all this right. You would not think that I had been at this for years.

3940. **Mr Stewart:** You are quite right, Chair. Too much excitement for members on one day might be dangerous.

3941. **The Chairperson:** Chris and Peter, as always, thank you, and we look forward to meeting you again next week.

3942. **Mr Stewart:** Thank you, Chair.

12 March 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Peter Burns *Department of Education*
 Mr Chris Stewart

3943. **The Chairperson:** Today, we continue the informal clause-by-clause scrutiny of the Education Bill. In your pack, you will find the Committee Clerk's cover note, together with a revised clause-by-clause scrutiny table summarising all the written and oral evidence and setting out the proposed amendments.
3944. At this point, I invite Chris and Peter to join the meeting.
3945. If we can, we want to conclude the informal scrutiny today. Before I ask the officials from the Department of Education (DE) whether they wish to remind the Committee of their evidence on the clauses, schedules and amendments, I will ask members to indicate their views. If there is consensus on a clause, the Committee Clerk will update the table accordingly. The minutes of this meeting will indicate that there is informal agreement. If there is no consensus, I will ask members to set out the different viewpoints, and the Committee will informally determine its position or reserve its position. At that stage, no votes will be taken. The Committee will divide on the clause, as necessary, only during our formal clause-by-clause scrutiny.
3946. If you recall, we informally agreed that we were content with some issues.
3947. **The Committee Clerk:** At a previous meeting, members went through almost all the clauses; in fact, they got to the schedules. However, the Committee has not taken a position on clause 2. So, by way of tidying up, I suggest that we start with clause 2 and go to the schedules after that.
3948. **The Chairperson:** On 27 February, we heard advice on clause 2. I propose to begin with that clause and then move to the schedules. After that, we will consider the other proposed amendments. Clause 2 places a duty on the Education and Skills Authority (ESA) to contribute towards the development of children and young people. To deliver that, it must co-ordinate the planning and delivery of schools, educational services and the Youth Service with a view to promoting the achievement of high standards of educational attainment. ESA must also encourage and facilitate the development of education in Irish-speaking schools. We previously obtained legal advice on clause 2(5), which refers to Irish-medium education (IME). We also got two pieces of advice on clause 2(3), which covers ESA's duty to treat schools on the same basis, regardless of whether their premises are vested in ESA.
3949. The Community Relations Council wanted the clause to be amended so that shared education would have to be promoted by ESA. The Northern Ireland Council for Integrated Education (NICIE) wanted ESA to be required to promote integrated education, and it has again written to us on the subject. Comhairle na Gaelscolaíochta (CnaG) wanted amendments to require ESA to promote Irish-medium education, although the Governing Bodies Association (GBA) wanted an amendment to ensure that Irish would be promoted only in Irish-speaking schools. The National Association of Head Teachers wanted amendments to require ESA to promote

all forms of education — faith-based, integrated and IME. The Northern Ireland Public Service Alliance (NIPSA) and the Transferor Representatives' Council (TRC) took very different views on the duty to contribute to spiritual development. NIPSA wanted that removed from the Bill, and TRC wanted a commitment in the Bill to provide the necessary curricular and other support. NICIE and the Northern Ireland Commissioner for Children and Young People (NICCY) argued that the clause be amended to require the principles of equality and inclusivity to be included in the Bill.

3950. Chris, have you any comments on that?

3951. **Mr Chris Stewart (Department of Education):** I have very little to add to what we have said previously, other than to indicate that the Minister is not minded to proceed with any of those amendments. However, he indicated that he is prepared to consider the request for a clause similar to clause 2(5) but referring to integrated schools. He has received correspondence from NICIE and the Integrated Education Fund in which they set out their arguments for that. The Minister is considering that but has not yet come to a view.

3952. **The Chairperson:** Members have no other comments. Given that we raised issues around clause 2(5), are members content to park the clause?

Members indicated assent.

3953. **The Chairperson:** That brings us to schedule 1. It sets out the composition of the ESA board. It also sets out ESA's procedures in respect of finance and reporting. Stakeholders commented on the schedule. NICCY sought clarity on how the community in Northern Ireland was to be represented. The Western Education and Library Board sought an answer as to why DE rather than ESA is to lay accounts; we will come back to that in a moment or two. A number of stakeholders set out suggestions for a different composition of the ESA board. Stakeholders sought representation from young people,

the trade unions, voluntary grammar schools, IME schools and integrated schools. Some suggested enlarging the board, and some suggested maintaining the relative levels of representation for controlled and maintained schools. The Commission for Catholic Education sought a rewording of the schedule to remove references to "maintained schools" and replace that with "Catholic schools". The commission also suggested that certain appointments to the ESA board should be subject to consultation with the relevant sectoral body. NIPSA sought an amendment that would include specific references to the seconding of staff to the Northern Ireland Civil Service. In the GBA's initial submission, it suggested an amendment to the schedule to allow any grant-aided school, subject to certain criteria, to retain employment powers.

3954. It is fair to say, Chris, that there was not a lot of consensus on schedule 1. We have gone from Dan to Beersheba.

3955. **Mr Stewart:** A road that we are used to, Chair.

3956. **The Chairperson:** NICCY asked for clarity on how the community in Northern Ireland was to be represented. Obviously, it all depends on whether you want an education community, a religious community, a geographical community or a professional community. What do we mean when we talk about representing the community?

3957. **Mr Stewart:** It would be geographical; it would be persons living in Northern Ireland. With that section of the membership being as small as four, it will be a real challenge to make it representative. It is one of those requirements that is, perhaps, more easily observed in the breach than in the honouring. As I said to members previously, if, for example, the four members were all to be male, all to be female, all to be from one community background, all to be from west of the Bann or all to be from east of the Bann, the requirement of the provision would not be met. As far as it is possible to do so, and it is difficult to go very far with

only four members, the four persons chosen should be representative, certainly not unrepresentative, of the geographical community in Northern Ireland.

3958. **Mr Lunn:** Frankly, I am astonished by that. That is the last thing that I expected the Department to say about the four representatives, that they should be from north, south, east and west. It is constantly being hinted that there is scope within the community representatives to represent some of the bodies and the interests that are crying out for representation. Frankly, I am very surprised to hear that this is merely a means of bringing geography into the equation, when there are another 20 members who presumably will be from a wide geographical spread.

3959. I am also intrigued by the Department's response to NICCY's comment:

"There is no requirement in the Heads of Agreement for the membership to represent the diverse needs of children".

3960. So what? The heads of agreement are on two pages of foolscap. A lot of things are not there. I appreciate that the Bill has to pay attention to the heads of agreements, but I do not think that it is fair to say that there is no requirement in the heads of agreement so it does not need to be done. I am surprised by all that.

3961. **Mr Stewart:** If I may, I will clarify my opening answer. I apologise if I misleadingly gave Trevor the impression that the four persons would be chosen geographically — that is, one from the north, south, east and west. That is not what I meant. You had mentioned a list of definitions of community that may be given; I intended to convey in my answer that it is not a subset of the population of Northern Ireland. That is what I mean by geographical criteria. The community is the population of Northern Ireland, not any particular subset therein. Of course, within that, it is absolutely possible for persons who wish to, or feel that they, represent particular interests or sectors in education to apply for membership. I have no idea whether they have. The

Minister would certainly have welcomed such submissions had they been brought forward.

3962. Trevor is correct about the heads of agreement. It is a political document but one that Ministers and the Executive asked the Department to pay attention to when preparing the Bill, which is what we have done. The intended membership of ESA was set out in some detail in the heads of agreement, and that is reflected in the Bill. There was not a specific or even a general requirement anywhere in the heads of agreement to adopt the sort of language that the commission has suggested, and that is why it does not appear in the Bill. To capture in legislation that sort of language or its intention would also be a difficult technical exercise.

3963. **Mr Lunn:** I just think that it is a dismissive comment. I mean no offence to Chris, who has been helpful throughout. However, to say that there is no requirement for the membership of ESA to represent the diverse needs of children and young people is completely the opposite of what it should represent. The Bill is about the diverse needs of children in Northern Ireland. I find that particular paragraph astonishing. Chris and I must have differing views on the meaning of "geography" because I am getting slightly lost here. You said something about a "subset", but geography, to me, is north, south, east and west.

3964. **Mr Stewart:** I think that I would share that definition. I meant to say that if I gave you the impression that geography — where someone lived in Northern Ireland — was somehow going to be an explicit criterion for membership, that is not the case.

3965. **Mr Kinahan:** Throughout, the Department comments:

"This is contrary to the Minister's policy, as agreed by the Executive".

3966. Surely that should read:

“as agreed by the Executive, but subject to Committee amendments and the Floor of the Chamber”

3967. in that I understand that it went through the Executive with exactly that. Is the Minister really saying that he has no intention of changing and does not want us to change the other groups of four?
3968. **Mr Stewart:** You are quite right: the content of the Bill is ultimately a matter for the Assembly to decide, and the Committee will play a major role in advising and informing the Assembly as to how it might proceed. At this stage, however, our understanding is that the Committee wishes to know the Department’s view, which is the Minister’s, on the range of amendments that has been put forward. We indicated clearly where the Minister’s view is that he is not minded to accept the suggestion. That, of course, does not preclude the Assembly and Committee from concluding that such an amendment should be made and taken to the House.
3969. **The Chairperson:** I assume that Danny is referring to the position as it was when the Bill came to the Executive. As with the Welfare Reform Bill, parties in the Executive reserved their rights to raise issues and concerns and to change and modify the Bill as appropriate. So it was a quid pro quo; on the one hand, Sinn Féin said that it reserved the right over the Welfare Reform Bill, with which it has issues; and, equally, we reserved our right to raise issues with the Bill that creates ESA. That is my understanding. I am not party to what goes on at Executive meetings, but that was what the system reported about where we were at with these issues, so I think that reflects the position reasonably accurately. Are there any other comments?
3970. **Mr Stewart:** Chairman, I cannot comment on the position of particular parties, but the legislative requirement is that a Minister needs Executive agreement to bring forward a Bill — that is, Executive agreement to the policy and to the content of the Bill, as introduced.

That is why all the references are strictly accurate. It is not just the Minister’s policy; it is the Minister’s policy, as endorsed by the Executive. Of course, that does not preclude the Minister, the Executive or this Committee from suggesting amendments to the Bill. Ultimately, the Assembly will decide what is final.

3971. **The Chairperson:** In the past, you mentioned that the Minister was minded to consider making an amendment to the definition of a Catholic school. That was put to him by the Catholic trustees and was in response to an issue in paragraph 2(c)(ii) of schedule 1, which states:
- “4 shall be persons appearing to the Department to represent the interests of trustees of maintained schools”.*
3972. Do you have any update on that?
3973. **Mr Stewart:** Certainly, Chair. There are two separate issues that are linked. The Minister indicated that he is prepared to consider including a definition of a Catholic school and a revised definition of an Irish-speaking school in the Bill. Those will probably be proposed for inclusion in clause 63, which relates to sectoral bodies. The main reason why we need definitions of those schools is that the definition of a sectoral body is a body that represents schools of a particular description. We need to get the particular descriptions right, and the Minister is persuaded of the need for a definition of a Catholic school and a revised definition of an Irish-speaking school to give effect to that.
3974. In paragraph 2 of schedule 1, we have reflected the wording of existing legislation for nomination rights, and the schedule refers to “maintained schools” rather than “Catholic schools”. In giving effect to that, we need to follow the legal advice that we received. Members will know that, for a long time, we struggled to find a way through what appeared to be legal difficulties with preserving the rights of the transferors and the trustees. However, the legal advice is that we can do that by sticking closely to the existing formulation in legislation,

- recognising existing rights and carrying them forward in the Bill. That is why the reference is to “maintained schools”, as it is in the 1986 order.
3975. **The Chairperson:** The Western Education and Library Board sought an answer as to why the Department rather than ESA was to lay the accounts. Historically and practically, education and library boards (ELBs) laid their accounts.
3976. **Mr Stewart:** There is nothing sinister in that, Chair. We simply understand that to be the requirements of the Department of Finance and Personnel (DFP).
3977. **The Chairperson:** What will have changed with the green book? It will be ELBs today and ESA tomorrow. The green book still applies at the moment in relation to ELBs laying their accounts.
3978. **Mr Stewart:** It is actually a different colour of book, Chair. In the past, it was a red book called ‘Government Accounting Northern Ireland’. It is now a book called ‘Managing Public Money Northern Ireland’. I am not sure what colour it is.
3979. The education and library board requirements date from 1986. That is quite elderly legislation, and our understanding is that it is a DFP requirement for accounts to be laid by the Department. That reflects the line of accountability from the Department and the Minister to the Assembly.
3980. **The Chairperson:** There are no other queries. Members, are we content with schedule 1, or do we want to reserve our position?
3981. **Mr Lunn:** Reserve our position, Chair.
3982. **The Chairperson:** Is the Committee content to reserve its position on all that relates to schedule 1, including the amendments?
- Members indicated assent.*
3983. **The Chairperson:** Schedule 2 relates to employment, and we obviously have an issue with clause 3. I assume that our position will be the same.
3984. Schedule 2 sets out those matters that must be included in schemes of employment, including the staff complement, discipline and suspension policies. The schedule allows ESA to determine certain aspects of employment schemes for controlled and maintained schools if they have had their delegation withdrawn. The Committee agreed to park its consideration of this schedule pending a response on the heads of agreement. Obviously, there is no further information in relation to that, Chris.
3985. **Mr Stewart:** Not as yet, Chair. I understand that discussions are ongoing.
3986. **The Chairperson:** Are there any comments on schedule 2? It covers the issues of employment and employment schemes. You will have seen the model schemes of employment that cover the issues of the appointment of staff, discipline, dismissal and suspension.
3987. **Mr Stewart:** Chair, it might be useful to remind members why the schedule is there and what it is intended to achieve. That may inform your consideration of whether it is adequate.
3988. A concern reported by many stakeholders was that ESA would have too much leeway to interfere in the content of employment schemes and might seek to include things that ought not to be there or rule out things that would quite legitimately be included. The purpose is to give some protection to submitting authorities and schools about the content of employment schemes.
3989. The original proposal in the previous Assembly mandate was simply to do so by guidance, but that was felt to be much too weak. Subsequently, we proposed to do that in subordinate legislation through a set of regulations. However, that was thought to be too vulnerable to arbitrary change by the Department, and Committee members felt that the appropriate level of safeguard would be to include these provisions in the Bill. That is why they are in schedule 2.

3990. The provisions follow fairly closely a set of draft regulations that some members may recall from the previous Assembly mandate. If you trawl through existing legislation, you will find some quite similar provisions in schedule 2 to the 1998 order, from where those are derived. They are supposed to set out, in some detail, the things that must be in a scheme of employment and how it will operate. They are also supposed to prohibit ESA from doing certain things that it would otherwise have had the freedom to do. We hope that members agree that that gives the comprehensive protection that submitting authority stakeholders were looking for in the schemes.
3991. **The Chairperson:** Are there any comments?
3992. **Mr Lunn:** Chairman, I cannot help but notice the GBA's comments. I know that we waiting for white smoke to appear from another place at the moment — I am not talking about Rome, but the discussion —
3993. **The Chairperson:** Oh, right; I was getting worried. I thought that we had strayed way beyond the remit.
3994. **Mr Stewart:** I am not sure which will come first.
3995. **The Chairperson:** I thought that someone was going to have to get a flight and cast a vote.
3996. **Mr Lunn:** Chris has rightly said that he is not sure which one will come first.
3997. **The Chairperson:** I think that we can be reasonably sure which one will come first.
3998. **Mr Lunn:** The GBA wants the schedule to be amended to preserve the integrity of paragraph 10 of the heads of agreement. There is not much doubt what interpretation it is putting on this. It wants paragraph 10, which indicates that, when it is the case, schools will continue to employ their own staff. I see from the Department's response that that is contrary to the Minister's policy. I am sorry to go on about this, but the

Minister said in the House that there is no contradiction. However, it seems that more of a contradiction is building up. That is not a question, Chair.

3999. **The Chairperson:** Chris, I will not ask you to comment on white smoke or any other colour of smoke. We will stick to yellow smoke, which I understand is the colour they use to test whether the chimney is working.
4000. **Mr Stewart:** I merely want to remind members again — they will forgive me for repeating it — that we understand the GBA's view. It feels that the only proper interpretation of paragraph 10 of the heads of agreement is that voluntary grammar schools should continue to be employers in law. That is not the Minister's view. He feels that the provisions in the Bill give effect to paragraph 10 of the heads of agreement, which, in answer to Trevor's point, is why he feels that there is no contradiction. Clearly, the GBA takes a different view.
4001. **The Chairperson:** I think that our decision is that we will reserve our position on schedule 2.
4002. I will suspend our proceedings now to give members an opportunity to prepare for the House. The Minister is making a statement to the House at 10.30 am on the North/South Ministerial Council meeting in education sectoral format. We will resume at 11.15 am after the Minister's statement.

Committee suspended.

On resuming —

4003. **The Chairperson:** We finished at schedule 2, which was parked. We move on to schedule 3: “Transfer to ESA of staff employed by boards of governors”. Schedule 3 makes provision for the transfer of staff from boards of governors to ESA within the protections under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) regulations. This is in line with ESA becoming the sole employer of all staff in schools.
4004. The GBA asked for an amendment that would ensure that staff transferring to ESA under the Bill would have terms and conditions consistent with those beginning contracts after the passage of the Bill. It also suggested amendments, as part of a sequence of amendments, that would make ESA the agent of the board of governors. NIPSA sought amendments that would ensure that transferring staff would enjoy the protections of TUPE on pay and pensions.
4005. Have you any comments to make on that, Chris?
4006. **Mr Stewart:** I have a couple of points. This is one of a number of related schedules to achieve the transfer of staff to the employment of ESA. In this case, it is the transfer of staff currently employed by boards of governors, so that involves voluntary grammar schools, grant-maintained integrated and Irish-medium schools. The protections in the schedule — the references to the TUPE regulations and pension protection — are consistent with the principles set down by the Public Service Commission and agreed with trade unions centrally as being applicable throughout the RPA, and they are reflected in the Bill in a very similar way to the provisions that were in the health legislation some years ago.
4007. As you say, there is a series of proposed GBA amendments here and at other places in the Bill that reflect its position on what it thinks that the outcome ought to be on employment matters, but, as the Minister indicated, that is not his view, and he does not support that.
4008. I draw members’ attention to the timing of the schedule’s commencement. It needs to commence the day after Royal Assent, but that does not mean that the transfer takes place then. The schedule commences at that time simply to allow the Department to draw up the necessary transfer scheme, which comes into effect on a later date — on the appointed day when ESA becomes the employer of all staff.
4009. **The Chairperson:** Chris, will you clarify the difference between this transfer scheme and the current process of a straight transfer under TUPE? Is there a distinction?
4010. **Mr Stewart:** Yes. TUPE is very complex legislation, and there is a lot of case law on whether TUPE would apply broadly within the public sector. The starting point is that the lawyers would say that TUPE is not normally applicable, and certainly not meant to apply, in any situation thought of simply as a reorganisation within the public sector. If, for example, the number of Departments changed and civil servants were transferred from one Department to another, that would not attract the protection of TUPE. However, because it was agreed as a central plank of RPA policy that TUPE would apply, there are provisions in the schedule to put that matter beyond doubt. That is why the particular provision is somewhat wordy. What it says, in translation, is that whether or not TUPE would otherwise apply, the effect of the schedule is that it does apply and will be applied to the transfer.
4011. In the absence of TUPE, certain requirements on the employers would not apply, but the effect of TUPE means, for example, that certain notifications have to be given to members of staff in a particular timescale before the transfer takes place so that they are aware of exactly what is happening, exactly what their rights are and exactly what their protections are under the legislation, and that will be

- done. At present, colleagues in the implementation team are engaging with the various schools that will be affected by the provision to start gathering the relevant information — the number of staff, their posts, their terms and conditions and their pension arrangements — that will need to come with them to ESA when the transfer takes place.
4012. **The Chairperson:** Are there any other questions?
4013. **Mr Lunn:** I presume that we will park this schedule because the basic premise for the transfer to ESA of staff employed by a board of governors is open to question under paragraph 10(c) of the heads of agreement.
4014. **The Chairperson:** Yes. Are there any comments on amendments proposed by other organisations? NIPSA's proposed amendment is:
- "Schedule 3 2(6)b (& 2(8)) to be amended to clarify that pension provisions will be protected and maintained following transfer".*
4015. The response from the Department was:
- "The provision reflects the policy of the Minister and the Executive, which is to provide pension protection at the point of transfer".*
4016. **Mr Stewart:** Yes, and that is exactly what is there. That is a carefully worded response to what I assume was a carefully worded suggested amendment. One cannot offer protection in perpetuity. Pension protection, like protection for terms and conditions, applies at the point of transfer, but it is possible that, at some point in the future, an employer or, indeed, the Government, may make changes to the pension arrangements. Under a later schedule, for example, a number of departmental staff will transfer to ESA. They will retain their right of membership to the principal Civil Service pension scheme. That is how we will give effect to pension provision, but, as we know, the Government may make decisions in the future on, for example, the level of contribution or the level of benefit that will be available under that scheme. One cannot legislate for or against that in this Bill.
4017. **The Chairperson:** OK, members, we reserve our position on schedule 3.
4018. We move on to schedule 4, "Transfer of assets, liabilities and staff of dissolved bodies". Schedule 4 makes provision for the transfer of these assets, liabilities and staff of ELBs, the Staff Commission, the Youth Council and the Council for Catholic Maintained Schools (CCMS). There will be protection for staff under the TUPE regulations.
4019. The Western Education and Library Board sought information on the ESA location strategy. NIPSA put forward a number of technical amendments designed to extend TUPE protection. CnaG suggested that the schedule be changed to require ESA to consult the trustees of IME schools prior to transfer.
4020. **Mr Stewart:** A number of the amendments are similar to those proposed to schedule 3, and, where that is the case, the Minister's view is the same. On the Western Board's suggestion, we can well understand why staff throughout the education organisations would wish to know as early as possible where their jobs are likely to be located in the future. As I have said previously at Committee, unfortunately, no one is or could be in a position to give that information now. There will be a location strategy for ESA. It will be drawn up by ESA staff, but, of course, before it goes anywhere else, it will need to be approved by the members of ESA when they are appointed. Thereafter, it will go to the Department for the Minister's approval, so the timing of a location strategy is, unfortunately, still some way away. It will not happen until at least a number of months after ESA comes into existence.
4021. **The Chairperson:** Have you yet received a list of which assets, liabilities and staff of the dissolved bodies are being transferred and which are not?
4022. **Mr Stewart:** We are still some way from that, Chair. We have passed on the Committee's request for that information

- to colleagues working in that area. They understand the need to provide the Committee with that information as soon as it is available. It is likely to be some time. I do not think that we could give you any reassurance that it will be available before the end of Committee Stage.
4023. **The Chairperson:** The same thing applies to schedule 4 as applies to schedule 3 because they are interrelated and both subject to clarification and confirmation of what will happen on employment. So we will reserve our position on schedule 4.
4024. Schedule 5 makes provision for the transfer of certain assets and liabilities from CCMS before the appointed day. This allows for those assets not transferred to ESA to be transferred to the Church. Obviously, that follows on from what we asked previously because we will be interested to see what exactly is the case. At the previous meeting, Chris, when I mentioned the complicated and convoluted calculation process, you clarified that this was about clawback as opposed to assets. Have I understood that properly?
4025. **Mr Stewart:** I hope that I explained it correctly, Chair. Mercifully, we are spared from having to delve into the arcane intricacies of clawback. As you rightly say, the arrangements are very challenging, but they apply to capital grants provided for schools. The clawback arrangements for when a premises ceases to be used as a school are complex and vary over time, depending on the date on which the grant was paid. Thankfully, with these assets, those arrangements do not need to be considered. Where a capital asset was provided using public money, it will transfer lock, stock and barrel to ESA. Where it was provided with funding from, for example, the Church, it seems right and proper that it should revert to the Church when CCMS no longer exists. Therefore, clawback really should not be an issue in relation to any of these assets.
4026. **The Chairperson:** We need to keep in mind that schedule 5 relates specifically to CCMS.
4027. Why is it necessary at paragraph 2(3) of schedule 5 to state:
- “Before making an order under this paragraph, the Department shall consult —*
- (a) any person to whom or body to which assets or liabilities are to be transferred by the order;*
- (b) the Roman Catholic Archbishop of Armagh and the Roman Catholic Bishops of Clogher, Derry, Down and Connor, Dromore and Kilmore;”.*
4028. Why was it necessary to name the bishops as opposed to naming the trustees?
4029. **Mr Stewart:** The bishops are the Church authorities for the various Roman Catholic dioceses. CCMS’s premises are scattered across the various dioceses, with CCMS offices in each see. Therefore, the appropriate consultee in each case would be the bishop. In effect, Chair, it is the same group of people: the bishops are the senior trustees in Catholic education.
4030. **The Chairperson:** I just wonder why it was necessary to name them all as opposed to naming the trustees.
4031. **Mr Stewart:** It was simply to be comprehensive in each case. The appropriate person to consult in the CCMS diocesan office in Down and Connor, for example, were there to be a transfer of an asset back to the Church, would be the Bishop of Down and Connor. It is simply to be comprehensive and precise. I must say that it is the only experience that I have ever had of having to name all the Roman Catholic bishops in legislation. It is not something we have to do very often.
4032. **The Chairperson:** There is another issue. Are we satisfied that they, as the appropriate authority, will be able to resolve issues such as the orders? We know that, in some cases, the trustees do not have ownership of a school and it may be owned by, for example, a religious order. This is about the assets

of CCMS, which are different from the assets of a school building. A school building may be owned by any one of a number of organisations. I can see what you are attempting to do here. You are being comprehensive to ensure that you have covered them all, but is there any likelihood that there will be one or two quirks, as there are in the controlled sector? I can think of one school in my constituency that has a very strange legal existence based on a document signed perhaps hundreds of years ago, and it will be very problematic to resolve that issue. In this instance, is there anything like that which is a potential difficulty?

4033. **Mr Stewart:** We do not think so. We are not aware of anything like that. Where, for example, a particular building is funded by a religious order as opposed to the diocese, that is covered by paragraph 3(c) of schedule 5, which states:

“(c) any other person or body whose interests appear to the Department to be affected by the making of the order.”

4034. In all instances, the expectation is that we will consult the bishops, but if it is necessary to consult a religious order, we will do so. Indeed, in such an instance, it might be that the premises would be transferred back to the religious order rather than to the diocese.

4035. **Mr Lunn:** Are there any situations in which the ownership is not clear?

4036. **Mr Stewart:** The honest answer is that I do not know, Trevor. One would hope not, but there is an ongoing process of engagement with CCMS to identify any assets that it would be appropriate to transfer back to the Church. One would hope that there are not any instances in which there is a lack of clarity and certainly not any dispute. The way in which the legislation is structured means that transfers back to the Church need to take place before the appointed day. Anything not transferred to the Church before the appointed day automatically transfers to ESA. The default is that any assets not identified

as transferable to the Church will go to ESA.

4037. **Mr Lunn:** They could, however, subsequently be transferred if ownership was clarified?

4038. **Mr Stewart:** Yes, if it subsequently transpired that a mistake had been made and a particular asset had gone in the wrong direction, that could be rectified.

4039. **The Chairperson:** Paragraph 3(2) of schedule 5 states:

“In any statutory provision or document any reference to CCMS shall, in relation to any time after the transfer date, be construed as a reference to the transferee.”

4040. **Is ESA the transferee?**

4041. **Mr Stewart:** No, not under this schedule. It will almost certainly be the Church.

4042. **The Chairperson:** OK.

4043. **Mr Stewart:** I am sure that you will see a similar reference in the other schedules, where the transferee is ESA.

4044. **The Chairperson:** Is there, for other transferors, any similar provision to that in paragraph 3(4) of schedule 5, which reads:

“The transfer does not affect the validity of anything done by or in relation to CCMS before the transfer date.”

4045. **Mr Stewart:** That is a standard provision, and there will be a similar provision in the schedule dealing with assets from education and library boards.

4046. **The Chairperson:** Members, we will reserve our position on schedule 5 and move on to schedule 6.

4047. **Mr Lunn:** We could nearly agree schedule 5, Chairman, because no one has raised any issues, and that would mean that we had agreed two.

4048. **The Chairperson:** It will be worthwhile to ensure that we satisfy ourselves, as a Committee, about what is being transferred and have that clarity.

4049. **Mr Stewart:** At the risk of arguing against the Department's position, if the Committee is reserving its position on the clause that activates the schedule, it would perhaps be unusual for it to take a decision on the schedule but not on the activating clause.
4050. **The Committee Clerk:** The Department has written to us, and my interpretation of the letter — maybe the Department will correct me — is that the Committee will not receive the list of staff and assets that are to be transferred. Unless I have misunderstood, members will not see that before formal clause-by-clause scrutiny. Chair, if the Committee is reserving its position now on that basis, when you come to formal clause-by-clause scrutiny, you will have to make up your minds and you will not have that information.
4051. **The Chairperson:** OK. We will move to schedule 6, which is on the transfer of certain staff of the Department. This schedule makes provision for the transfer of staff from DE to ESA with the protections under the TUPE regulations. NIPSA proposes a number of technical amendments relating to TUPE. CnaG sought amendments to cover the transfer of CnaG and NICIE staff. To keep us right, Chris, did we say that it was somewhere in the region of 140 staff?
4052. **Mr Stewart:** It is slightly higher than that, Chair, probably nearer 170. By far the greater number, about 130, will come from the teachers' pay and pensions team in Waterside House in Londonderry. Approximately 40 staff will transfer from departmental headquarters at Rathgael.
4053. **The Chairperson:** CnaG commented:
- "The Bill currently makes provision for the transfer of CCMS staff to ESA. No such provision is included for the transfer of CnaG and NICIE staff associated with the transfer of direct services from these bodies to ESA. The Schedule should be amended to make such provision in respect of salaries and pension rights."*
4054. **Mr Stewart:** The Minister is sympathetic to the view expressed by CnaG and a similar view expressed by NICIE. It is not clear at this point whether any staff will transfer from either organisation. As with the other affected bodies, an examination of their functions is going on, and if any functions are identified as being appropriate to transfer to ESA, one or two members of their staff may also transfer. The Minister has given a commitment that the same protection would apply should those transfers take place. So the staff involved would transfer on protected terms and conditions and with pension protection, but it would be difficult and challenging to try to legislate for those transfers given that NICIE and CnaG are not statutory organisations, and the Minister would prefer not to go down that line. However, he has given assurances to both organisations that, if transfers do take place, their staff will have equality and parity of protection alongside other staff who are transferring.
4055. **The Chairperson:** Any comments? Is the Committee happy to agree to schedule 6?
- Members indicated assent.*
4056. **The Chairperson:** Schedule 7 is on minor and consequential amendments, and there are a number of comments. The Commission for Catholic Education sought an amendment to change the references. We have already referred to Catholic maintained and Catholic voluntary schools. CnaG sought an amendment that would allow for a new definition of an Irish-medium school or unit. CnaG also sought an amendment to require proposers of new Irish-medium schools to consult the relevant sectoral body. The GBA suggested an amendment that would allow the tribunal to adjudicate on all disputes between ESA and the board of governors, not just those relating to employment schemes and management schemes. On that final point, Chris, is that being considered?
4057. **Mr Stewart:** No, Chair. The Minister would not see that as appropriate. One would hardly need the Department, if the tribunal was going to cover all those matters.

4058. **The Chairperson:** What did we pick up last week about consideration being given to expand the role of the tribunal? What did that relate to?
4059. **Mr Stewart:** A number of amendments put forward by trade union colleagues suggested a very significant expansion of the role of the tribunal, almost to the point of making it a general purpose industrial relations and health and safety tribunal. One can understand the argument being made, but it is not one that the Minister agrees with.
4060. **The Chairperson:** Any comments? Are we to believe that a proposal or amendment will come from the Department on the change of definition?
4061. **Mr Stewart:** Yes, for Catholic schools and Irish-speaking schools. The Minister is sympathetic to that, and we are working on proposed amendments. The Minister is persuaded of the need for the inclusion of a definition of Catholic school. If that can be agreed, we will not need a reference to Catholic-maintained school anymore: that could be removed. The Minister is also sympathetic to the suggestion that we need a revised definition of Irish-speaking school. There is a definition in the 2006 order, but it has not really kept pace with developing policy. It covers Irish-speaking schools and schools with Irish-speaking units, but it does not include schools that have Irish-speaking streams, which is where a number of pupils in the school take a number of subjects in Irish, but the remainder of the teaching is done in English. We are giving consideration at the moment — at a meeting this afternoon following this — to how best to do that in legislation.
4062. **Mr Lunn:** I am curious about why the Bill refers to Catholic schools but to Roman Catholic bishops.
4063. **Mr Stewart:** That is because there is more than one Catholic Church.
4064. **Mr Lunn:** Yes, but there are Roman Catholic schools. I am not aware of any Church of Ireland schools. Possibly there are.
4065. **Mr Stewart:** There are four, to my knowledge.
4066. **Mr Lunn:** Are they Catholic schools?
4067. **Mr Stewart:** They are Catholic schools if one is considering —
4068. **The Chairperson:** The Apostles' Creed.
4069. **Mr Stewart:** — the Apostles' Creed, but not when it comes to education legislation. Trevor, you are right: you have pointed out a difference in the use of "Catholic" in relation to schools as opposed to its more general and correct usage in matters religious. However, if we were to start calling them Roman Catholic schools at this stage, it might simply cause confusion. Certainly, when one is referring to the Church, it is necessary to give it its full title as the Roman Catholic Church, which means any church in full communion with the Bishop of Rome.
4070. **The Chairperson:** We do not, however, currently have one.
4071. **Mr Lunn:** I am not suggesting a change, Chairman, I am just —
4072. **The Chairperson:** I see signs that we will get pulled into that election one way or another, if we keep going on.
4073. **Mr Lunn:** We will need more white smoke.
4074. **The Chairperson:** We will be so confused that we will not be sure what colour the smoke is.
4075. **Mr Stewart:** I am not certain that that is within the legislative competence.
4076. **The Chairperson:** I do not think that it is. All facetious comments aside, Trevor has raised a valid point. It would be interesting to see the amendments on that definition. Chris, I know that we have asked you this ad infinitum, but is our having sight of those amendments nearer at hand today than it was seven years ago?
4077. **Mr Stewart:** Many things have changed since seven years ago, Chair. I have conveyed to the Minister the Committee's desire to see the

- ministerial amendments as soon as possible. He is considering that.
4078. **The Chairperson:** I am assured that we wrote to the Minister on those terms last week. We will have to reserve our position on schedule 7.
4079. That takes us to schedule 8, which sets out the existing legislation that is being repealed. To save Chris repeating it, I remind members that they have previously received the list of what stays in existence and what is being repealed. This is a technical clause. Are there any comments from members? Under schedule 7, a considerable number of issues are relevant to the Department for Employment and Learning (DEL). Do we have any indication from DEL on where its amendments are?
4080. **Mr Stewart:** Its amendments will mainly be to clause 47 and inspection powers. It has been in contact with the Office of Legislative Counsel, and I think that those amendments are at a fairly advanced stage. We hope to see them fairly soon.
4081. **The Committee Clerk:** — *[Inaudible.]*
4082. **The Chairperson:** OK. We have written to the Minister for Employment and Learning to request notes.
4083. **Mr Stewart:** It may help members to know that those amendments are very much about bringing the DEL inspection powers much closer to those proposed for the Department of Education. Clause 47 will probably end up being very similar to clause 45, with the addition of the extension of the DEL inspection remit to cover private sector training providers. The powers themselves will be almost identical. In fact, I suspect that they will be identical to the powers proposed for the Department of Education. So any concerns and issues that members might have about clause 45 are likely to apply to clause 47.
4084. **The Chairperson:** Chris, will you clarify for me who will carry out the function of the Commissioner for Complaints?
4085. **Mr Stewart:** Schedule 1 will add ESA to the remit of the Commissioner for Complaints and, in so doing, will automatically bring ESA within the remit of section 75 of the Northern Ireland Act.
4086. **The Chairperson:** It was previously the function of CCMS, was it not?
4087. **Mr Stewart:** Yes, CCMS was within the commissioner's remit.
4088. **The Chairperson:** In schedule 2, the entries relate to the Council for Catholic Maintained Schools. That is the extent of the repeal.
4089. **Mr Stewart:** Yes.
4090. **The Chairperson:** So was the remit of the Commissioner for Complaints only for schools under the jurisdiction of CCMS?
4091. **Mr Stewart:** It was not to schools, just to CCMS as an organisation, and to the Staff Commission and the Youth Council as well. The commissioner does not currently have jurisdiction for schools, but, as some members will know, that is proposed in changes to that legislation. Under the various regulatory regimes, the Bill explicitly brings ESA within the remit of the Commissioner for Complaints and, in doing so, brings ESA within the remit of section 75. We have also specifically included provision to bring it within the Freedom of Information Act, and it becomes automatically subject to the Human Rights Act because of the nature of the functions that it performs.
4092. **The Chairperson:** If it comes under the remit of section 75 as a result of that, how could it have —
4093. **Mr Stewart:** The distinction to make is that ESA as an organisation will be subject to section 75, not individual schools.
4094. **The Chairperson:** I was going to draw that distinction.
4095. **Mr Stewart:** I feared that you were going to ask that.
4096. **The Chairperson:** It is ESA as an organisation, not individual schools.

- There is surely a legal point that, if it is the employer of all staff in all schools, there is, de facto, an issue of whether it is then subject to section 75, even whether or not the regulations give them an exemption in certain regards.
4097. **Mr Stewart:** The more general question of the extent to which equality legislation should apply to individual schools would be a matter for the Office of the First Minister and deputy First Minister (OFMDFM). We are satisfied that the effect of this particular provision is clear. It will make ESA, as an organisation, subject to section 75, and ESA will, therefore, have to produce an equality scheme to be submitted to the Equality Commission for approval. However, it will not give ESA, as it were, a role in equality matters in schools. That would require a different decision by OFMDFM.
4098. **The Chairperson:** OK. I note that one of the repeals relates to the Safeguarding Board Act (Northern Ireland) 2011. Michelle raised this issue last week. Is it in the tabled items?
4099. **The Committee Clerk:** Yes, it is. You talked about the Safeguarding Board's relationship to ESA and the relevant bit of the legislation — [Inaudible.]
4100. **The Chairperson:** It says that ESA will replace the education and library boards as a member of the Safeguarding Board by virtue of the following amendment which can be found in schedule 7 to the Bill.
4101. There is also a reference to clause 55 and a data-sharing protocol between those entrusted with a duty of care under the Bill for the safeguarding of children and young people. As with all members of the Safeguarding Board, ESA will be obliged to supply information requested by the board as soon as is reasonably practical after the request is made, as per section 11 of the Safeguarding Board Act (Northern Ireland) 2011.
4102. **Mr Stewart:** There is nothing sinister in the repeal of section 12(1)(g) of the Safeguarding Board Act (Northern Ireland) 2011. It is a technical change to make sure that the two pieces of legislation fit well together.
4103. There is one particular area in which the requirements of education law are more exacting than the requirements of the Safeguarding Board Act, so we are applying those rather than the provision in the 2011 Act.
4104. **The Chairperson:** OK. Do members have any comments on schedule 8 repeals?
4105. Are members content to agree schedule 8?
Members indicated assent.
4106. **The Chairperson:** OK, members, that brings us to the end of the schedules. I want to draw your attention to a number of miscellaneous issues. We should take a moment or two to go through those before we conclude. They are listed in the clause-by-clause summary document.
4107. Some of the more substantive issues were not covered in other clauses. We may have referred to them in the past, but it will be good to get them placed again. On page 132-3, for example, the TRC suggestion is that a role be guaranteed for sector support bodies in estate management. TRC also requests an amendment to allow for the nomination of controlled school post-primary governors from among the transferor nominating authorities of contributory schools.
4108. Page 134 outlines suggestions made by the University of Ulster to amend the Bill to include a more explicit focus on improving education performance and tackling inequality. Also on this page is the Association for Quality Education proposal to withdraw or radically amend the Bill to devolve power from the current education and library boards and CCMS to boards of governors. Finally on this page is the proposal from the Ulster Farmers' Union to amend the Bill in line with the Schools (Consultation) (Scotland) Bill, which would change the procedures for the closure of rural schools.

4109. Page 135 details David Stewart's proposal to amend the Bill to align the school year with the financial year. It also outlines a proposal by Parents Outloud to amend the Bill to allow parents to defer their child's entry to primary school in certain circumstances.
4110. We have covered some of those issues in the past. Do members want to comment on any of them or shall Chris comment first?
4111. **Mr Stewart:** I will just pick out and emphasise one to which the Minister has said yes, which is the request from the transferors for the change in arrangements in nominating governors to post-primary schools. The Minister accepts the argument that has been put to him and will bring an amendment to that effect.
4112. **The Chairperson:** That is to be welcomed. Does the Committee agree? That is on page 133 in the miscellaneous section of our clause-by-clause table.
4113. **Mr Kinahan:** Is he likely to extend that to other public groupings?
4114. **Mr Stewart:** It does not have a read-across to other groupings; it is a particular requirement. Transferors have the right to nominate a certain proportion of the governors of controlled post-primary schools. However, there is an additional requirement that those governors must also be governors of the feeder primary schools. That creates a difficulty for the transferors. They are finding it increasingly difficult and a real challenge to persuade people to be governors of two schools. The Minister is persuaded that it would be right to remove that latter requirement. They will still have the same nomination rights but will not necessarily have to draw those nominated from the governors of feeder primary schools.
4115. **The Chairperson:** It is a practical move and should have been done long ago because it has put undue stress on the requirements of the controlled sector and TRC. Does the Committee support the TRC proposition?
- Members indicated assent.*
4116. **Mrs Dobson:** Chair; on the Ulster Farmers' Union suggestion that the Bill be amended in line with the Bill in Scotland, have we got that information yet?
4117. **The Chairperson:** Yes. We received a report and a research paper last week on the Schools (Consultation) (Scotland) Bill. Have you any comment on that, Chris?
4118. **Mr Stewart:** The Minister recognises the importance of the issues raised and the significance of planning decisions on rural schools. He thinks, though, that there is scope in the Bill to address any policy decisions made on foot of that. There is extensive legislation on the area-planning process, and there is the opportunity for the Department to produce guidance and regulations, not only on the process but the content of plans. So, for example, were the Minister to adopt a particular policy position on how rural schools should be treated in the area-planning process, and that position needed legislation, we could include that in a set of regulations.
4119. **Mr Lunn:** If you are finished with that one, Chairman, the final one in this section is a suggestion from NICIE about special schools. It suggests that the Bill 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 is that that is "outside the scope of the Bill." Taken together, the various orders across the Bill designate what an integrated school is and what ESA and the Department's duties are to that movement.
4120. Leaving aside what the Assembly may think about whether special schools should be capable of being designated as integrated schools, why would that be outside the scope of the Bill? We have just been discussing schedule 8, in which there are repeals galore. NICIE seeks a pretty minor adjustment to the 1989 order, so what is the problem?

4121. **Mr Stewart:** It is a minor adjustment, and the amendment would not be a particularly difficult one to make. That long list of repeals and, indeed, the long list of amendments in schedule 7, are consequential. They are all needed to give effect to the scope of the policy agreed by the Executive. The Executive have not agreed or asked us to legislate on whether special schools can be integrated schools. Were they to do so, making the amendment would not be particularly difficult. It is entirely open to the Committee or the Assembly to amend the Bill in that way. The Minister has not set his face for or against it; he simply noted that this had not been agreed by the Executive, and we had not been asked to do it.
4122. **Mr Lunn:** Does that mean that it could not be included in the Bill and would have to take a separate route?
4123. **Mr Stewart:** I see no reason why it could not be included. Members will have seen a very recent example of an amendment to a Bill that was perhaps not envisaged when the Bill was introduced.
4124. **Mr Lunn:** Never heard of it. [Laughter.] Well, that is fair enough. So, by the will of the Assembly, it could be brought under the Bill.
4125. **The Chairperson:** The only thing that I personally would add is that we have been able to resist bringing special schools into a debate about whether they are controlled, maintained integrated, Irish-medium or whatever. They are special schools, regardless. The controlled sector is to be commended on the way it has managed. It basically comes under the remit of the education and library boards, with, as we clarified the last time, two exceptions.
4126. **Mr Stewart:** We think that there are one or two exceptions.
4127. **The Chairperson:** Yes. My only concern is that special schools are for pupils with particular needs. I do not think that we should go down the road of trying to put them into the particular category of maintained. We have seen what is happening with Woodlands, and I am not happy about what is happening there. I can understand, for practical reasons of service provision, the reason for the Western Education and Library Board proposing to do what it is doing, but it has created a situation in which children are being treated as some sort of commodity, with four maintained, six controlled and seven this. Almost a reverse argument is being used. If we want to show examples of shared provision, special needs is one of the best examples. That is the only reason why I am at a wee bit of a loss as to why this has been suggested.
4128. **Mr Lunn:** I was doing my best not to open up that argument. NICIE does not want special schools to be redesignated as integrated; it wants individual schools to have the same ability to apply for transformation if they want to. It does not want to redesignate all special schools. That would be ridiculous.
4129. **The Chairperson:** OK.
4130. **Mr Lunn:** If 20% of the parents wanted to kick-start the process to see where it led, they would not be allowed to do so. That is all that the NICIE proposal is about.
4131. **The Chairperson:** I am not aware of them not being allowed to do that. I thought that the transformation process was open to any school.
4132. **Mr Stewart:** Except special schools.
4133. **The Chairperson:** Are special schools the only ones that are exempt?
4134. **Mr Stewart:** Yes.
4135. **Mr Lunn:** That is the argument.
4136. **The Chairperson:** Jo-Anne, did you want to come in on this?
4137. **Mrs Dobson:** No, I am just agreeing with you.
4138. **Mr Lunn:** Are you agreeing with him or me?
4139. **Mrs Dobson:** I am agreeing with the Chair about special schools.

4140. **The Chairperson:** Members, are there any other comments about the miscellaneous issues? I think that we talked previously about the suggestion from Parents Outloud to allow parents to defer, and the Department's response was that it was outside the scope of the Bill.
4141. **Mr Stewart:** Indeed, Chair. That example, along with the one that Trevor raised and a whole raft of suggested changes on integrated or shared education and which one might think are very good or not very good, are not in the scope of the Bill that the Executive asked us to prepare.
4142. **The Chairperson:** Does the Committee support any of the changes suggested to us?
4143. **Mr Kinahan:** The Committee as a whole?
4144. **The Chairperson:** Yes, or individual members.
4145. **Mr Kinahan:** I rather like the GBA's suggestion.
4146. **The Chairperson:** OK. As there are no other comments, we will leave it as it is and reserve our position on those miscellaneous issues.
4147. Members, that concludes our discussion of the schedules and the miscellaneous issues. I propose that we suspend our proceedings until tomorrow at 9.30 am.
4148. **The Committee Clerk:** Chair, before you suspend proceedings, we have now come to the end of the informal review of the clauses, and the Department has written to the Committee a number of times. It is up to the Committee whether it wants to ask the Department to come tomorrow to talk through some of those responses. I had provisionally scheduled a time for that. If, for example, I interpret the Department's letter on the shared education question correctly, it indicates that there will be no policy definition in the immediate future. Likewise, there will not be a list of assets and posted transfers. I am also not sure whether there will be a response on the heads of agreement or whether the Committee will see any of the departmental amendments.
4149. Does the Committee want a further briefing from the Department on the letters that it has sent to us recently?
4150. **The Chairperson:** Are members happy with the correspondence already received rather than having an additional briefing on the issues?
- Members indicated assent.*
4151. **The Chairperson:** OK, members. We will suspend our proceedings and reconvene tomorrow morning.

19 March 2013

Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
 Mr Danny Kinahan (Deputy Chairperson)
 Ms Michaela Boyle
 Mr Jonathan Craig
 Mr Chris Hazzard
 Mr Trevor Lunn
 Miss Michelle McIlveen
 Mr Sean Rogers
 Mr Pat Sheehan

Witnesses:

Mr Chris Stewart *Department of Education*

4152. **The Chairperson:** We commence the formal clause-by-clause scrutiny of the Education Bill. Members' meeting papers include the Committee Clerk's covering note, an issues paper and a revised clause-by-clause scrutiny table. We will be considering the Bill's clauses and schedules for the last time, and the Committee will be asked to set out its decision on every clause and schedule. If there is a consensus in favour of a clause or schedule, as drafted, I will ask the following Question:

"Is the Committee content, subject to consequential amendments, with the clause or schedule, as drafted?"

4153. If members assent, the minutes will reflect that the Committee was content, and we will move on to the next clause or schedule.

4154. Members who want a clause or schedule to be amended should indicate so and set out an amendment. Again, if there is a consensus on an amendment, the Committee will be asked the following Question:

"Is the Committee content in principle with the proposed amendment?"

4155. Should members assent, the minutes will show that an amendment was adopted in principle. If there is not

a consensus on an amendment, the Committee will divide.

4156. If more than one amendment is put forward, I will marshal the amendments with advice from the Committee Clerk, and we will vote on them in the sequence that I will set out. Once we have made up our minds about the amendments, we will vote on the clause as drafted or amended. I will put the Question:

"Is the Committee content with the clause or schedule as drafted or as amended?"

4157. If there is a consensus that the Committee opposes a clause completely — that is to say that it is not content with the clause and is not prepared to support amendments — the minutes will reflect that the Committee opposes the clause. As before, if there is no consensus on opposition to a clause, the Committee will divide. Should the Committee oppose a clause through division or otherwise, I will ask members whether they wish to register their formal opposition to the clause for Consideration Stage. Were the Committee to do that, the opposition to the clause would be drafted at Consideration Stage. If we do not register opposition, the opposition to the clause may not be debated at Consideration Stage.

4158. When we conclude our decision-making on all the clauses, I will ask members whether they are content with the Bill's long title. Members should note that the long title Question will be the Committee's final decision on the Education Bill. There will be no opportunity to vote on the Bill as a whole. As indicated previously, there will be no opportunity today or tomorrow for briefing from the Department, lengthy questioning or any significant debate by members. Where there is no consensus, we will not debate but simply vote. I am sure that that is as clear as the

mud that was on the football and rugby pitches yesterday, when all those teams were playing.

4159. As previously, I ask the Department to join us to answer questions as required during the formal clause-by-clause scrutiny, should anything arise. Chris has just arrived. Perhaps we should clarify one matter before we proceed: will the Committee have sight of any of the Department's amendments prior to the commencement of the formal clause-by-clause scrutiny?

4160. **Mr Chris Stewart (Department of Education):** Those are with the Minister for his consideration. He has not yet come back to me.

4161. **The Chairperson:** OK, members; we will commence the formal clause-by-clause scrutiny. I advise members to use a copy of the Bill and the clause-by-clause table, which is in their meeting pack. I am sure that you all know this off by heart, so let us get organised.

Clause 1 (The Education and Skills Authority)

4162. **The Chairperson:** Clause 1 of the Bill applies schedule 1 and gives the name of the Education and Skills Authority (ESA). The Committee previously informally agreed that it was content with the clause as drafted.

4163. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

4164. Clause 1 agreed to.

Clause 2 (Functions and general duty of ESA)

4165. **The Chairperson:** This clause places a duty on ESA to contribute towards the development of children, young people and the community. ESA must co-ordinate the planning and delivery of schools, educational services and youth services, with a view to promoting the achievement of high standards of educational attainment. ESA must also encourage and facilitate the development of education in Irish-speaking schools.

4166. We had previously obtained legal advice on clause 2(5), relating to Irish-medium education (IME). We have also received legal advice on clause 2(3), which covers ESA's duty to treat schools on the same basis, whether or not their premises are vested by ESA. The Department has responded, indicating that there will be no policy clarity on shared education for some time. The Department previously advised that the Minister is bringing forward an amendment that would replicate the provisions of clause 2(5), which currently apply to Irish-medium education schools, for integrated education.

4167. The Committee had previously reserved its position on this clause, but formally agreed not to support an amendment that was suggested by NIPSA to remove the duty on ESA to promote the spiritual development of children and young people.

4168. Chris, is there an update on clause 2(5) from the Department?

4169. **Mr Stewart:** To clarify that point, Chairperson, the Minister is considering bringing forward an amendment similar to clause 2(5). He has not yet made a formal decision.

4170. **The Chairperson:** Do members have any comments in relation to clause 2?

4171. **Mr Lunn:** I am sorry, Chairperson, I missed your opening remarks. Are we going through this proposed amendment by proposed amendment?

4172. **The Chairperson:** No.

4173. **The Committee Clerk:** It is exactly as you said, Chairperson. The Committee has already done that in its informal clause-by-clause consideration. We are now in clause-by-clause consideration to decide whether to amend, yes or no, or whether members are content with a clause, yes or no.

4174. **The Chairperson:** We should remember that this is the Committee. This is not us speaking on behalf of individual parties. Members should be aware that although we have tried to be as thorough

- as we possibly can be on this, whether or not the Committee has an agreed position does not in any way preclude parties or individuals from tabling amendments to the Bill.
4175. It would be right to place on record that the DUP members — I speak as a member of that group — will not support clause 2(5).
4176. **Mr Rogers:** Is it here or later that we will discuss ESA's responsibility to encourage and facilitate faith-based education? Is that later on somewhere?
4177. **The Committee Clerk:** The clause deals with the general functions and duty of ESA. Therefore, if the member wished to put forward an amendment in relation to that, this is the time to do it.
4178. **The Chairperson:** Do any members wish to bring forward amendments in relation to clause 2?
4179. **Mr Rogers:** No.
4180. **Mr Lunn:** I am sorry; I am still slightly confused about procedure. You have indicated that some members will not support clause 2 because of subsection 2(5). I will not support clause 2 because of another subsection, which does not particularly matter at the moment. Do we take a vote on it?
4181. **The Chairperson:** May I just clarify whether it is the case that if you do not support clause 2(5) or clause 2-whatever, that means that you are not in favour of the clause?
4182. **The Committee Clerk:** Chair, do you wish to go into private session to talk about all this?
4183. **The Chairperson:** Yes; OK.
4184. The sitting was suspended at 9.45 am and resumed at 9.51 am.
4185. **Mr Hazzard:** Am I right in thinking that, as well as deciding on clauses, we can put down a recommendation in the Bill report or seek an assurance? Shared education and its promotion are referred to throughout the Bill. In advance of the report from the Minister's advisory group, and given that we have no real and agreed definition of "shared" or "integrated", can we recommend or outline something along the lines that the Committee desires to see enhanced collaboration or sharing in the future, when the process is finalised?
4186. **The Committee Clerk:** Yes, and I am grateful to the member. In addition to amending or opposing a clause or simply voting for it, members can also seek a ministerial assurance. So, you can ask the Minister to say at Consideration Stage, "Yes; this is what this clause means". In addition, the Committee can make a recommendation in its report. The report is never debated but, again, that would clearly signal the Committee's views on, say, something like shared education, if there is indeed an overall Committee view on that. I hope that that is clear.
4187. **The Chairperson:** OK. So, the Committee Clerk has said that that our report can reflect issues of concern about clause 2 that were raised by Trevor; the DUP's objection to clause 2(5); concerns raised by Sean about faith-based education; and the comments made by Chris Hazzard about seeking the Minister's assurance that further work will be done regarding shared education and collaboration. Is that what we want?
4188. **Mr Hazzard:** Yes, if something could be done along those lines.
4189. **The Committee Clerk:** On shared education: is it the general view that the Committee would support the principle that ESA and the Department should have a responsibility to use resources efficiently by encouraging schools to collaborate for the betterment of the educational experience for pupils? Would that be the case?
4190. **The Chairperson:** Yes.
4191. **Mr Kinahan:** I would go with that.
4192. **The Chairperson:** I think that we would agree on that.
4193. **The Committee Clerk:** Jolly good.

Members indicated assent.

4194. **The Committee Clerk:** I think that I am clear on Mr Lunn's concern, because he referred to amendment h, and about Mr Rogers's on faith-based education. Just to be clear on clause 2(5) —
4195. **Mr Kinahan:** I have similar concerns with amendment h.
4196. **The Committee Clerk:** So, if I understand correctly, is it the case that some members feel that the clause 2(5) provisions would lead to an inequality in education and an unfair advantage for what is always going to be a small sector, whereas other members would take the view that Irish-medium education is a culturally important sector and that failure to support it through the Bill would, in itself, lead to a different kind of inequality? Is that a fair summary of where we are?
4197. **The Chairperson:** Yes.
4198. **The Committee Clerk:** Jolly good.
4199. **Mr Hazzard:** So, we do not vote on that though, do we?
4200. **The Committee Clerk:** Well, I think that the Committee is deciding, Chair, if I understand correctly —
4201. **The Chairperson:** I am entirely in your hands. It is whether you want to vote on that or you are content that we leave it as set out in a summary of what the Committee Clerk has said, which would be included in the report.
4202. **Mr Kinahan:** I think it is too vague to vote on, Chair. I like the approach that you have gone for.
4203. **Mr Lunn:** Chair, you said some time ago that the DUP would not support clause 2(5). Does that mean that your intention is to attempt to take it out completely?
4204. **The Chairperson:** It is very clear, on the basis of advice that the Committee has received, that there are serious issues as regards having equality of provision across the piece. My view, and our view, is that clause 2(3) sets out clearly the parameters within which ESA should ensure that schools whose premises are not vested in ESA are treated on the same basis as schools whose premises are vested in ESA.
4205. **Mr Lunn:** That is not the argument, Chair. I am not trying to get into a detailed argument here, but that is not the argument about clause 2(5). It is not the case that Irish-medium schools are not vested and all the rest are. It is a different argument, and that is why I am a wee bit confused.
4206. **The Chairperson:** If you go back and read the legal advice that the Committee received, you will see that it sets the context for clause 2(5).
4207. **Mr Kinahan:** We are considering adding other clauses to that, but I do not want to say what they are today. We will just leave that for the moment?
4208. **The Committee Clerk:** If members wish to put down amendments in their own right, they can certainly do so at Consideration Stage. However, if they want to get the Committee's support, they need to do that now.
4209. **The Chairperson:** Clause 3 is ESA to employ all staff of grant-aided schools —
4210. **Mr Lunn:** Sorry, Chair. What did the Committee decide on clause 2?
4211. **The Chairperson:** We decided that the report will reflect the issues and concerns expressed by the Committee Clerk. Do you want him to repeat all those again?
4212. **The Committee Clerk:** The report will indicate the issues that were expressed by members: Mr Lunn, Mr Rogers, Mr Hazzard, etc. However, the Committee has decided not to vote on the clause and to withhold its overall opinion on that clause.
4213. **Mr Lunn:** It sounds suspiciously like what we did a couple of weeks ago.
4214. **The Chairperson:** The difference is that that was informal scrutiny and this is formal scrutiny. We have no other opportunity to come back to this after today and tomorrow. We cannot seek

- any further information. We cannot delay or ask for anything else. So, in a sense, it is make-your-mind-up time. In that process, there may be individuals, parties or whoever who decide not to say anything or do anything.
4215. The huge difficulty and problem that we have is that we have no sight of the amendments from the Department. We have only partial sight of amendments from the Department for Employment and Learning (DEL). We have seen only part of what DEL is proposing in relation to the Bill. Yet, because of the timetable for the process that was set by us and the Assembly, we have to produce a report by 8 April. I reluctantly throw this comment to members. The timetable probably does not allow us to do this, but it is about whether we make any further request for delay. After today, there are no plenaries until 8 April, which is the date that we are due to report. Is that correct, Peter?
4216. **The Committee Clerk:** Yes, Chair. If you were to seek a further extension, as we did previously, you would have had to do that about two weeks ago so that it could get to the Business Committee and then into plenary. As the Chair said, it is make-your-mind-up time. If I understand correctly, in the absence of departmental amendments and certain clarifications that it sought, the Committee has decided to not make up its mind on the clause but to set down its concerns.
4217. **Mr Hazzard:** I would like a clarification. I mentioned shared education. Are we requesting an assurance from the Minister about that or will that be a recommendation in the report?
4218. **The Committee Clerk:** If I understood the member correctly, I thought that he wanted a recommendation in the report.
4219. **Mr Hazzard:** That is what I was thinking. However, I am open to discussion on what the Committee feels. Shared education in the future is mentioned throughout everybody's submissions. I just thought that a way forward might be to tidy that up into one recommendation.
4220. **The Chairperson:** Chris, what you are asking is whether we put it in the report or just seek an assurance. The shared education working subgroup is due to report at some stage. Obviously, it is an issue for the Minister and the Department as to how it responds to that. However, if I understand you correctly, you are saying that, in the report, we should ask for an assurance that shared education will be reflected. The difficulty is that it all depends on the Minister. When the Bill goes from here on 8 April, it basically goes back into the hands of the Department and the Executive, and they will decide on when to bring Consideration Stage to the Assembly.
4221. **The Committee Clerk:** When to bring Consideration Stage is entirely in the hands of the Department.
4222. **The Chairperson:** My understanding is that, at that stage, the Department would still be in a position to table its amendments and would probably do so. Although we could certainly come back and look at the amendments, as we will have completed our scrutiny of the Bill, we would not be able to make any formal change to them. It would then be an issue for the House to decide whether it accepts those amendments. Isn't that correct?
4223. **The Committee Clerk:** The Committee could certainly seek evidence from the Department and, if it wanted to, produce another report on the amendments that we await from the Department. The only thing is that the Department would not be obliged to wait for us to report. When we report on 8 April, we are officially out of the process. It then goes back to the Department, which is in control of when Consideration Stage happens. If you want to produce another 10 reports on the Bill, you could do that. However, the Department does not have to wait. It could go ahead with Consideration Stage. However, if you wished, you could certainly take evidence from the Department, scrutinise those amendments and produce another report.

4224. **Mr Kinahan:** How long can they delay Consideration Stage?
4225. **The Committee Clerk:** Until the end of the mandate, and then it falls. That has happened to the Marine Bill.
4226. **The Chairperson:** I remind those who were not on the previous Education Committee that that is what happened to the previous Education Bill when it left the Committee. I do not want to fill everybody with a sense of optimism.
4227. Members, just so that we are clear, there will be a recommendation in the Committee's report that the Minister and the Department give further consideration to shared education. Are we happy enough with that?
4228. **Mr Kinahan:** Do we not want to put it more strongly than that?
4229. **The Chairperson:** In what sense?
4230. **Mr Hazzard:** The danger is that we all have different definitions of shared education.
4231. **The Chairperson:** I think that we do.
4232. **Mr Hazzard:** It is important that we reflect that, in the consultation, there was a desire —
4233. **The Chairperson:** We will not do it, but I think that if we went round the table, we would hear different views and interpretations. As I have always said, shared education is interpreted by different people in different ways, at different times, in different places; that is the issue. However, there is a general view that shared education, as an aspiration, should be pursued further and elaborated on. Some will call it integrated —
4234. **Mr Lunn:** No.
4235. **The Chairperson:** No? There is no point in me trying to explain everybody else's views, but there are different views.
4236. **Mr Kinahan:** Chair, I wonder whether you should state "especially across sectors" or something, because that adds a different level.
4237. **The Chairperson:** You would not have shared education within sectors. However, knowing some of the schools, it might not be a bad idea to have shared education within sectors.
4238. **Mr Kinahan:** You do in some cases.
4239. **The Chairperson:** We are all big enough to know that when we talk about shared education, we mean across educational boundaries and sectors.
4240. **Mr Lunn:** Chair, I agree with you. However, since you mentioned it, the word "integrated" has a particular connotation, because there is a model for that. If you use the term "integrating of schools", that is, in a way, the same as "sharing of schools". That is where there is a distinction, in my mind.
4241. **The Chairperson:** A popular suggestion is that we come back tomorrow with a recommendation that we can sign up to, rather than agreeing on it today. We are taking on board Trevor's comment. OK?
- Members indicated assent.*
- Clause 3 (ESA to employ all staff of grant-aided schools)**
4242. **The Chairperson:** Are we doing all right? Aye, we are doing OK.
4243. **Mr Lunn:** Good old clause 3.
4244. **The Chairperson:** Yes, good old clause 3. OK, I remind members that this clause makes ESA the employer of all staff in grant-aided schools. The clause defines the term "submitting authority" in the case of voluntary schools. For example, this clause makes the trustees the submitting authority instead of the board of governors, as is presently the case. The clause requires trustees to consult with the board of governors and allows the board of governors to refer a scheme to a tribunal to test its compatibility with the heads of agreement.
4245. The Department previously advised that the clause cannot be operated owing to contradictions with the heads of agreement. We have written to the

- Office of the First Minister and deputy First Minister (OFMDFM) and the Department, seeking amendments to the Bill or to the heads of agreement to resolve that problem. No response has been received. From the comments that Chris made, I take it that there are no amendments or anything forthcoming on this.
4246. **Mr Stewart:** Not as yet, Chair. Discussions are ongoing, as I understand it.
4247. **The Chairperson:** As the Department has advised, this clause is technically not operable. As the Department has not provided sight of relevant amendments, the Committee could reasonably decline to give its opinion. That has the same knock-on effect that we had with the informal clause-by-clause scrutiny. Clauses 3 right through to 9 deal with issues that are relevant to employment, and there is no agreement on, or sight of, an amendment and there is no indication that one is imminent. I do not speak as one who has any inside or outside track on that issue; I merely reflect what I read as being the case.
4248. I think we are in a situation where we have to offer something. There are opinions, and we have gone through all of them and they are all reflected. The other issue is that members should not be concerned that somehow if they have not said today what has been previously expressed as a concern, it will somehow be read as though you were not raising robustly enough the issues on behalf of whoever it is or whatever sector it is or whatever organisation it is. When people look at this file and see all the evidence, they will be well aware that a huge amount of work has been done but that there remains an issue in problems emanating from and around clause 3.
4249. **The Committee Clerk:** Just to be clear that I understand correctly, the Committee is not making up its mind on the clause because it has not seen the relevant amendments from the Department and is waiting for the response on this heads of agreement question. It would be helpful if members could indicate an opinion on the clause or the issue generally. Is it the case that some members view the clause as not wrong and feel that there are no contradictions with the heads of agreement, whereas others take the view that there are and that the issue of who is the sole employer is terribly important and has not been satisfactorily resolved or clarified?
4250. **The Chairperson:** The other issue is that although we understand the concern that some have about the loss of what they view as autonomy, control or the flexibility to be able to do what they have always done, there are others, even in sectors that are of a similar type and nature, who would value greatly having autonomy and the degree of flexibility to be able to do what others have done. So, we find ourselves with that conundrum. Therein lies the issue and the crux of the problem. If Peter were to reflect that in the way that he outlined, it would give us some sense of direction about people interpreting what they believe the Committee considered when it was looking at these clauses.
4251. **Mr Lunn:** I am not too clear about how far to go with this. Putting something on the record might even assist people in another place. I do not really care whether ESA is the sole employer of all staff or whether there is a get-out clause for grammar schools and, perhaps, some controlled schools, but it is perfectly obvious that the heads of agreement clash internally with themselves and clash with the Bill. At one point, the Minister said that they do not clash and, at another point, he said that they do. We need clarification. That is the main obstacle that is holding up all these clauses right through to clause 13, never mind clause 9. It is not the case that some of us want to see ESA as the sole employer of all staff or that some of us want all of the grammar schools, if they were already employing their own staff, to be allowed to continue to do so, or whether bigger controlled schools should be put on the same basis as grammar schools. It is not really a matter of that, it is a matter

- of having a proposal before us that we can look at with some clarity. Given that tomorrow is our last day for scrutiny on this, we are not going to get it, so what else can we do but, once again, reserve our position?
4252. **Mr Rogers:** I was interested in what you said earlier, Chair. I thought that maybe I missed some clarification when I was not at a meeting or two. We believe that there are contradictions between clause 3 and the heads of agreement and even contradictions within the heads of agreement, and the departmental response to the commission was that the Minister will advise the Committee of his proposals in respect of this clause in due course. I do not know when we got that, but it was quite a while ago. It is very difficult. I will not know what my view is of clause 3 until I see what the Minister is going to say.
4253. **The Chairperson:** Yes. Any other comments?
4254. **Mr Hazzard:** The report will reflect both positions and the different interpretations. We talk about shared education and even the word “contradiction”. I do not see as big a contradiction as other people might. The delegated autonomy to schools sort of balances it up.
4255. **The Committee Clerk:** I ask members to look at my issues paper. If I have captured your argument correctly, that is good. If I have not, please let me know. It is not my intention to misrepresent the argument.
4256. **The Chairperson:** Members, because we cannot comment on clause 3, does that bring us to the place where we cannot make comment on clauses 4, 5, 6, 7, 8 and 9, because they all have relevance to and are interrelated with clause 3?
4257. **Mr Lunn:** Yes, but I am not clear why you stopped at clause 9.
4258. **The Chairperson:** I think because it may be that we had — did we not agree clause 10?
4259. **The Committee Clerk:** The Committee informally agreed that it was content with clause 10 as drafted. Clauses 3 to 9 specifically reference employment schemes. Clause 3 actually references the heads of agreement itself, so it is technically inoperable, the Committee was told. Clauses 3 to 9 all reference employment schemes and are all about employment schemes. Clause 10 is not about employment schemes. It is about the transfer of staff.
4260. **Mr Lunn:** It is about the transferring to ESA of staff employed by boards of governors. In the opinion of whoever wrote the heads of agreement, clause 10(c) is not going to happen. That is one of the most direct contradictions in the whole situation, and it feeds through to — I am not too sure about clause 11, but certainly clauses 12 and 13. Those clauses are on salary payments and modification of employment law, which is what we are talking about.
4261. **The Chairperson:** So that we are clear, are we saying that, in our not having an opinion, the reasons that Peter has set out on clause 3 extend to clause 13? All of that relates to employment, to a lesser or greater degree.
4262. **The Committee Clerk:** Perhaps the Committee might want to take the Department’s view on that, particularly on clause 11. All that clause 11 does is substitute ESA for the boards in employing peripatetic teachers.
4263. **Mr Stewart:** I can well understand members wishing to treat clauses 3 to 10 and 13 as a block, but I think that it would be possible to deal with clauses 11 and 12, which, I think, are clearly related to the other employment clauses, but could stand or fall as they are, without being directly affected by whatever members or Ministers might feel about the other employment clauses.
4264. **Mr Lunn:** I am looking at clause 12 on that basis. The narrative at the top says that clause 12 provides that, while ESA will be the employer of all staff — that is what is under dispute.

4265. **The Chairperson:** Sorry, where are you at?
4266. **Mr Lunn:** Page 23 of our notes on the file. ESA will be an employer of all staff, but certain schools that currently operate their own payment schemes may continue to do so. I know that that is not quite the same thing as being their own employer, but I still think that it is confusing enough for us to try to take a view on it.
4267. **The Chairperson:** That is a valid argument.
4268. **Mr Kinahan:** Do we not, through this, still have vagueness on the legal interpretation of the Governing Bodies Association (GBA) amendments? We know the advice that we had from our lawyer, but, obviously, it is different from the GBA lawyer's advice. That is not clear.
4269. **The Committee Clerk:** If members are waiting for lawyers to agree, they might have to wait for a long time.
4270. **The Chairperson:** Therein lies part of the reason why this has gone on for the past six years.
4271. **The Committee Clerk:** At this point, members will have to make a judgement. They have had the advice that the Assembly got and the advice that came from GBA, and they will have to decide accordingly.
4272. **The Chairperson:** On the basis of Trevor's comments, and taking into account what Chris said, is it the Committee's view that we cannot express an opinion on clause 3 to clause 13, including clause 15 — was it clause 15 that you made reference to, Chris?
4273. **Mr Stewart:** Clause 15 is a perfectly innocent clause.
4274. **The Chairperson:** I could not understand why you said clause 15.
4275. **Mr Stewart:** I said clause 13.
4276. **The Chairperson:** My apologies; I thought it was clause 15.
4277. **Mr Stewart:** Members may well wish to treat clauses 3 to 13 as a block; I can understand members wishing to do so.
4278. **The Chairperson:** Even clause 11, which is in reference to peripatetic teachers?
4279. **Mr Stewart:** I think that there is an argument for treating clause 11 differently, but members may feel otherwise.
4280. **The Chairperson:** The Committee previously and formally agreed that it was content with the clause as drafted. At that time, members also agreed to defer consideration of the issues raised by Comhairle na Gaelscolaíochta on the separate legal status of IME schools until they looked at clause 63. I think there was a general agreement on clause 11.
4281. **Mr Lunn:** I do not mind whether we agree clause 11 or not at this stage, but I am reading that the Committee informally agreed to reserve its position on that clause because it was waiting for a response from the Department on the availability of Irish-medium teachers. We seem to have got that today, but we have only just got it today.
4282. **The Chairperson:** Then I think what we will do, so that we are not in any way creating an issue — sorry, Chris, did you want to come in?
4283. **Mr Hazzard:** I am thinking along the same lines as Trevor. I thought that we had reserved our judgement until we got this information from the Department, and we have seen that information today. I think that that backs up some of the arguments that we made the last time.
4284. **The Chairperson:** Members, are we saying that we will reserve an opinion on clauses 3 to 13 inclusive, so that we get an agreement on this?
Members indicated assent.
4285. **The Committee Clerk:** Just to be clear, the Committee has got its opinion. What it is saying is that it cannot make up its mind or come to a decision because of the absence of clarifications, heads of agreement, etc.
4286. **The Chairperson:** Yes.

Clause 14 (ESA to provide or secure provision of training and advisory and support services for schools)

4287. **The Chairperson:** Clause 14 places a duty on ESA to provide or secure training for the boards of governors and staff of grant-aided schools. The Committee previously noted suggested amendments relating to shared education. The Department advised that there will be no policy clarity on shared education for some time. The Committee also sought a response from the Department on the policy position underpinning this clause. That response has not been received. Any comments with regard to clause 14? Are we prepared to wait until we clarify that tomorrow?

4288. **The Committee Clerk:** I think that is what we are going to do. We are going to have that recommendation to come. If that covers it, I suggest that we agree or not agree the clause.

4289. **The Chairperson:** Agreed?

4290. **Mr Rogers:** I have two points. You would think that maximised delegated autonomy would mean that schools would have an option to buy in support and that sort of thing as well. I am a wee bit confused about the Department's response to the National Association of Head Teachers on page 28:

"The suggested change is contrary to the Minister's policy (which is for a 'mixed economy' of provision)."

4291. My interpretation of "mixed economy of provision" would mean that if you could get better staff development or whatever outside the loop, you would go for it. There seems to be a contradiction in that response.

4292. My other point goes back to the responsibility to develop and enhance faith-based education. If we are going to do that, there is a need for curriculum support there as well.

4293. **The Chairperson:** Have you any suggestions in relation to amendments, Sean?

4294. **Mr Rogers:** No. Leave it with me.

4295. **The Chairperson:** That is OK. Is the Committee content, subject to consequential amendments, with clause 14 as drafted? When we say consequential amendments, we are not referring to amendments that may be drafted by individuals or parties. We are referring to consequential amendments that may come as a result of a change in some other piece of the legislation.

4296. **The Committee Clerk:** That is right, Chair. If you got to clause 60, or whatever, and the Committee agreed to make an amendment that had consequences for earlier clauses, it would be silly to rescind your decision. If you do it subject to consequential amendment, you cover yourself for that but only that.

4297. **Mr Kinahan:** Are you are saying that if we have a possible amendment in mind, we should signal it?

4298. **The Chairperson:** Yes, that is entirely up to individuals. Is the Committee content with clause 14?

Members indicated assent.

Clause 15 (ESA to provide library services to grant-aided schools and other educational establishments)

4299. **The Chairperson:** This clause requires ESA, in line with departmental arrangements, to provide library services in grant-aided schools and other educational establishments. The Committee previously informally agreed that it was content with the clause as drafted. So, no comment? Is the Committee content, subject to consequential amendment, with clause 15 as drafted?

Members indicated assent.

Clause 16 (ESA to secure provision of educational and youth services and facilities)

4301. **The Chairperson:** The clause places a duty on ESA to provide adequate facilities for educational and youth

services. It allows ESA to organise activities or make grants available, etc, in support of that. Additionally, the clause permits ESA to make bylaws in respect of those facilities. The Committee previously informally agreed that it was content with the clause as drafted. Is the Committee content with clause 16 as drafted, subject to consequential amendment? Trevor?

4302. **Mr Lunn:** Actually, I was expecting Chris to say something about the shared education suggestion. Is this one of the clauses where you think all that would be —
4303. **Mr Hazzard:** As I said earlier, I think it tidies up the whole way throughout the Bill.
4304. **The Committee Clerk:** So, to clarify, the Committee has agreed to not amend the Bill in respect of shared education, but to put down a recommendation, the wording of which will appear tomorrow, encouraging the Department and ESA to facilitate efficient use of resources and betterment of educational experience for children by collaboration.
4305. **Mr Hazzard:** Something that reflects the mood that has been displayed.
4306. **The Chairperson:** OK. Agreed?

Members indicated assent.

Clause 17 (ESA to pay capital grants to voluntary and grant-maintained integrated schools)

4307. **The Chairperson:** This clause transfers the Department's powers to pay capital grants to voluntary and grant-maintained integrated schools to ESA. The Committee previously informally agreed that it was content with the clause as drafted. Is the Committee content, subject to consequential amendment, with clause 17 as drafted?

Members indicated assent.

Clause 18 (Establishment of controlled schools)

4308. **The Chairperson:** This clause gives ESA the power to establish controlled schools, nursery, primary, secondary or special schools. ESA can also

establish nursery classes in controlled schools that are not nursery schools. The Committee informally agreed to support the Transferor Representative Council's (TRC) proposed amendment, which would require ESA to consult with the relevant sectoral body before establishing a new controlled school. We had reserved a position on the clause. Are we now saying that the Committee is content to support the TRC's proposed amendment, which would require ESA to consult with the relevant sectoral body before establishing a new controlled school?

Members indicated assent.

4309. **The Chairperson:** So is the Committee happy with the clause as amended? We have not seen a draft of —
4310. **The Committee Clerk:** No, but you are agreeing in principle to the amendment.
4311. **The Chairperson:** Is there a requirement on us to have the Bill Office look at that? Whose responsibility is it to bring that forward? Is it the Department's?
4312. **The Committee Clerk:** After this meeting, I will write to the Department indicating that the Committee is going to support the amendment. Maybe the Department will be kind to us and it will support the amendment, too, and get the drafting done. Is it does not, I will go to the Bill Office and get it drafted.

4313. **Mr Lunn:** I have some reservation about that in light of the Northern Ireland Council for Integrated Education's (NICIE) comment. It has quite a bit to say about it. On page 34 the departmental response sets out the process, and basically:

"If the proposal is not in conformity with the plan, then ESA must reject it. If the proposal is in conformity with the plan, then the usual development proposal process will apply, culminating in a Ministerial decision."

4314. The trouble is that some of those ministerial decisions over the years have militated against the establishment of a new school because it was integrated. The only reason given for not allowing the school to be established was

because it might upset the balance of some non-integrated schools in the same area or beyond. That is NICIE's problem here. I notice on page 35 that NICIE suggested a mechanism for the opening of new integrated schools. That is already provided for in existing legislation, but, even so, we are not satisfied — I said “we” there — that the existing legislation is strong enough, and this might be the opportunity to do something about that. I am not sure what Chris thinks.

4315. **The Chairperson:** OK. Is that a slightly different argument from the issue raised by TRC, which was formally or informally agreed? TRC's issue was around the power to consult with the relevant sectoral body. Herein lies part of the difficulty, because that would — maybe not intended, but probably where it goes — determine who is the sectoral body for a controlled integrated school. At this minute in time, I assume that NICIE takes the view that it represents controlled integrated schools. I am not aware of the controlled sectoral body's view as to where it believes controlled integrated schools should sit. However, I would hazard a guess that it would be within the controlled sectoral body, the same as special schools, controlled Irish-medium schools or any school that is deemed to be under the remit of the controlled sector. I assume that it probably wants to have that under its domain. Chris, do you want to comment on that?

4316. **Mr Stewart:** Yes, I will perhaps respond to a couple of points. On that last issue, we absolutely recognise that there will be schools that may have business with or an allegiance to more than one sectoral body, and you gave an example of that. We do not see that as a particular difficulty. It was never the policy intention that sectoral bodies would each have a list of schools that they would own or have any sort of exclusive rights to. The Department will recognise sectoral bodies on the basis and quality of what they do. We think that it would be perfectly legitimate for a controlled integrated school to want to

have a relationship with the controlled sectoral body and, indeed, with NICIE, and to expect both bodies to represent certain interests.

4317. The Minister has some sympathy with the suggestion that there should be consultation with the relevant sectoral body before a proposal for a new controlled school is brought forward. Indeed, he is considering an amendment that would introduce a similar requirement for all types of schools, so that, before any development proposal came forward, there would be a requirement for consultation with the relevant sectoral body or bodies. In this case, if there were a suggestion for a new controlled integrated school, and given that there will be a sectoral body for the integrated sector and a controlled sectoral body, it would seem logical to consult both sectoral bodies and to consider carefully what both say.

4318. **The Chairperson:** I appreciate that, Chris, but I suspect that what Trevor is saying is that the existing power to establish a new controlled integrated school is not robust enough, although the Department has given its view on the clause. Just let me go back to this: are we still content with the TRC amendment, which would amend the clause to require ESA to consult with the relevant sectoral body before establishing a controlled school?

4319. **Mr Kinahan:** Should we make it “relevant sectoral bodies”, after what you have said?

4320. **The Chairperson:** Yes. “Bodies” would cover what Chris said in that, logically, if there is an integrated body and a controlled sectoral body, both would be consulted.

4321. **Mr Rogers:** There is nearly an assumption here that there could be other sectoral bodies. I think that the Minister's position is that there will not be any other than what he has set out at the minute.

4322. **The Chairperson:** Although “bodies” covers the eventuality of a change. I

- think that that is what we are trying to cover.
4323. **Mr Stewart:** There is a way of wording that so that we do not exclude any body that is in existence and recognised but do so without tying the Minister's hands on what bodies he might recognise in the future.
4324. **Mr Rogers:** That is fine.
4325. **Mr Lunn:** I go back to the departmental response to NICIE. It sets out the power to establish new controlled integrated schools. That is fair enough. The response goes on to state:
- “Development proposals for other types of schools will be subject to the same test, as would proposals to transform schools to GMI status”.*
4326. Does that not fly in the face of the existing rule that a certain percentage of parents can request the process to transform to grant-maintained integrated to kick-start the process and, eventually, that a majority of parents have to vote in favour of it? This seems to say that, even then, that might fall foul of the area plan in some way. I find that astonishing. If an existing school wants to change its status and that is the parental preference, which is referred to elsewhere, what on earth could be in the area plan to stop that?
4327. **Mr Stewart:** If, for example, the area plan deemed that the school was not sustainable.
4328. **Mr Lunn:** That is a different argument. That could apply to any school.
4329. **Mr Stewart:** As, indeed, the area plan would. Trevor has very neatly and accurately summarised the overall effect of the provisions, which is that any — if I may use the phrase in its broadest sense — development proposal, whether for a new school, transformation to a different status or other significant change to a school, would pass through or not pass through a filter of the area plan, if one is there. That is the same for all schools in all sectors and for all types of proposals. Members may take a view on whether that is the right policy approach, but it is consistent across the Bill.
4330. **The Chairperson:** The 1986 legislation is not being repealed.
4331. **Mr Stewart:** The relevant article — article 14 — is being replaced and re-enacted in schedule 7 to the Bill.
4332. **The Chairperson:** Article 14 of the 1986 legislation is about development proposals.
4333. **Mr Stewart:** Yes. There are some amendments to the articles in the 1989 order that are referred to in the departmental response. Articles 71 and 92 will, as Trevor said, make them subject to the test against the area plan in each case. It does not stop parents or a board of governors from initiating the ballot on transformation, but it makes the taking forward of any proposal for transformation subject to consideration against the area plan.
4334. **Mr Kinahan:** I go back to the idea in Crumlin of a shared maintained school. Are we, by discussing the clause in relation to controlled schools only, shutting the doors on any new form of combination of school?
4335. **Mr Stewart:** No, but if we want to create new types of schools, that would require specific provision. It is not generally possible to have a hybrid between any of the management types. They are mutually exclusive in the governance provisions in particular. However, as I have said to a number of stakeholders who have been interested in exploring new options for delivery on the ground, the maintained model is extremely flexible. We tend to associate the maintained model with Catholic education simply because the greater number of maintained schools are Catholic. Irish-medium schools are maintained, and a small number of Protestant maintained schools are owned by the Church of Ireland. It is possible to have joint ownership and joint-faith schools that are owned by more than one Church using the maintained management model. It is extremely flexible.

4336. **Mr Lunn:** We have probably said it all. NICIE has only sought clarification; it has not suggested an amendment. That is a valid clarification that it is looking for, because the Bill seems to introduce the situation where, on the basis of the area plan, the Minister might somehow have the power to reject a perfectly innocent proposal for a school to transform to integrated status, supported by whatever percentage of parents at the school, when the school is otherwise viable in budget, numbers, quality of education and all the rest of it. That is not my understanding of what is intended in the present process.

4337. **The Chairperson:** I will try to bring all that together. I assume, from what the Department is saying about the Minister's view, that we support the TRC amendment. However, reservation is being expressed by a member about the existing powers to establish a new controlled integrated school in the light of area planning.

4338. **Mr Stewart:** If members share Trevor's concerns, you will want to look very closely at the amendments in schedule 7 to article 71 and article 92 of the 1989 order. Those amendments will give effect to the matters that Trevor has raised concerns about. If that were the Committee's position, you might wish to consider rejecting the amendments in schedule 7.

4339. **The Chairperson:** We will not get to schedule 7 until tomorrow. I take it, Chris, that, in relation to article 14, there are additional requirements where an area education plan is in force.

4340. **Mr Stewart:** Yes. There are a number of particular amendments. As we said, there are particular provisions for establishing integrated schools, and there are particular amendments to those provisions to bring them into line with other types of schools so that they will be dealt with under area planning. If it is the Committee's view that they should not be dealt with in that way, you will want to consider changes to those amendments or perhaps even rejecting them completely.

4341. **The Chairperson:** We could accept the clause as amended but make the statement that we will look at the issues that are relevant to that when we deal with schedule 7 tomorrow. Happy enough?

Members indicated assent.

Clause 19 (Responsibilities of ESA in relation to controlled schools)

4342. **The Chairperson:** Clause 19 makes ESA responsible for the maintenance of school premises, providing and replacing equipment, employing all staff, and meeting the cost of all such other things as may be necessary for carrying out the functions of a controlled school. There are suggested amendments about shared education. The Department advised that there will be no problem in that regard. However, we have covered that in what we will bring to the Committee tomorrow. Is the Committee content, subject to a consequential amendment, with clause 19 as drafted?

4343. **Mr Kinahan:** Is there no way of putting a time frame on it so that decisions are made quickly? Is that outside the Bill?

4344. **The Chairperson:** Correct me if I am wrong, Chris, but this is another one that transfers what is currently the responsibility of an education and library board (ELB) into the hands of ESA.

4345. **Mr Stewart:** There is a wee bit more to it than that, Chair. It is creating a quite different relationship between ESA and a controlled school than the current relationship between a controlled school and an education and library board. Members may feel that there is a ring of familiarity around some of the wording. That is because it is very similar to the current provision on maintained schools. The duties that ESA will have in relation to controlled schools are very similar to the duties that an education and library board currently has in relation to maintained schools. In that sense, it is a transfer of a function, but it is applying it to a different set of schools.

4346. **The Chairperson:** It would be difficult to put a time frame on it. I assume that

the Department would say that it is an operational issue that will be subject to individual schools rather than generic for the controlled sector.

4347. **Mr Stewart:** It would be very unusual to try to specify a time frame for that sort of operational decision. If members were minded to consider that, I draw your attention to the fact that there will be a similar duty on ESA in relation to maintained schools. Therefore, you would perhaps be advised to think about that provision as well as this one.

4348. **Mr Lunn:** Clause 19(c) puts a responsibility on ESA for:

“employing, in accordance with section 3, all teachers and other staff”.

4349. You are back to section 3 again.

4350. **The Chairperson:** Should that read “clause 3” instead of “section 3”?

4351. **Mr Stewart:** No. We refer to clauses in the Bill. They are clauses at present. Because the word sits in the body of what is currently a clause, it refers correctly to a “section”, which is what it would be as and when the Bill is passed.

4352. **Mr Lunn:** It may need to be amended in light of what is happening in other places.

4353. **The Chairperson:** Controlled schools are currently employed by the boards.

4354. **Mr Lunn:** Controlled schools are making a determined bid to get the same autonomy as voluntary grammar schools.

4355. **The Chairperson:** Some are.

4356. OK. Are we saying that we have to put clause 19 in the same place as clauses 3 to 13?

4357. **Mr Lunn:** That was my suggestion, Chairman.

4358. **The Chairperson:** Are we agreed?

Members indicated assent.

4359. **The Chairperson:** The Committee Clerk says that to try to cover some of the issues that were raised about a timescale, we could put a

recommendation in the report to the Assembly that a review is carried out, within a number of years, of how it has operated in meeting its provisions under that particular responsibility. We could do that. Whether it would have much clout is another thing. At the end of the day, this would be how it was passed in the legislation. I suspect that if ESA were to come into operation, we would all want to see a review of how it has functioned and performed in a very short period of time, not just with regard to controlled schools specifically, but right across the piece. Are you happy to leave it as it is, members?

Members indicated assent.

4360. **Mr Lunn:** So, what do we do?

4361. **The Chairperson:** We are not recommending anything other than that clause 19 is now with clauses 3 to 13. We will leave it as it is. OK?

Clause 20 (ESA to contract for certain works)

4362. **The Chairperson:** Clause 20 gives ESA the power to enter into contracts for the provision or alteration of school premises. The contracts may be public-private partnerships or traditional procurement contracts. However, the contract is between ESA and the contractor or may be between ESA and the trustees or board of governors of a voluntary or grant-maintained integrated school. The Committee previously reserved its position on the clause. Are there any comments?

4363. **Mr Kinahan:** It is the same as the last one.

4364. **The Chairperson:** I think that I remember that the Department made the comment at that stage that it was a permissive clause, although I think that some concern was expressed about contracts. The comment by GBA states:

“Clause 20(1) should be amended to remove ESA’s blanket authority to enter into contracts relating to the provision or alteration of premises which are not vested in ESA.”

4365. The Department’s response is:

“Any contract let by ESA would, of course, require the consent of the owner of the school. This is already the case without amendment.”

4366. The proposed amendment is technically flawed, as some schools are not vested in boards of governors.”
4367. Is the Committee content to agree the clause, subject to consequential amendments and on the understanding that this is a permissive role of ESA rather than one that is seen by others as allowing it to do something that it would not be able to do at this time and even after its inception? By that, I mean the owners of the school. I think that that is what is set out in the Department’s comment:
- “Any contract let by ESA would, of course, require the consent of the owner of the school. This is already the case without amendment.”*
4368. **Mr Stewart:** That is correct. We do not feel that the clause would give ESA the power to carry out capital works against the wishes of a school. Some stakeholders may ask why, if that is the case, it does not say so in the legislation. We simply never would have conceived of such a situation arising. I have to say that I think that the concern raised by stakeholders — the notion that ESA would somehow inflict upon a school some capital work against its wishes — is bizarre. It is more often the case that we are criticised for not carrying out or not providing for capital works. The notion that we would somehow go in and build a new school with malice aforethought is not something that would have occurred to us.
4369. **The Chairperson:** I know that this goes back to something that we have dealt with, but ESA would have that power in relation to a controlled school.
4370. **Mr Stewart:** As the owner of the premises.
4371. **The Chairperson:** As the owner, as is currently the case with ELBs. ELBs currently have that power. Do ELBs undertake the contracts on behalf of controlled schools?

4372. **Mr Stewart:** They would do, yes. However, even there, I suppose that it is technically possible that ESA could let a contract to do something against the wishes of the board of governors of a school, but that would have had to be subject to a development proposal and consideration against the area plan.
4373. **The Chairperson:** The question is whether that brings us into contradiction with clause 2(3), which states:
- “In exercising its duty under subsection (2) in relation to schools, ESA shall ensure that schools whose premises are not vested in ESA are treated on the same basis as schools whose premises are vested in ESA.”*
4374. **Mr Stewart:** I do not believe that it does.
4375. **The Chairperson:** There are those who would argue that it does.
4376. **Mr Stewart:** Yes, there are those who would argue that.
4377. **Mr Lunn:** Is the voluntary category “B” that the Royal Belfast Academical Institution (RBAI) refers to defined somewhere?
4378. **Mr Stewart:** It is in the 1986 order. It is not quite defined in those terms. Those schools are almost defined by the absence of any reference to them. Category B schools have no agreement with the Department. For the other schools that have such an agreement, the nature of it is that their boards of governors are constituted in a particular way. It gives nomination rights to the Department for a certain proportion of the board of governors in return for being eligible for capital grant aid. Those schools have decided not to enter into such an agreement; therefore, the Department has no nomination rights for their boards of governors, and they are not eligible for grant aid. They can change their mind on that at any stage and become eligible. However, the notion that any school would be subject to or have inflicted upon it either capital development or grant aid is simply not the case. That will not happen.

4379. **Mr Lunn:** So, because they are not set up in a way that provides for capital grant funding —
4380. **Mr Stewart:** That is because it is their choice.
4381. **Mr Lunn:** Are they entitled to ask for it?
4382. **Mr Stewart:** They are entitled to ask for it, but they would have to enter into an agreement with the Department and drop out of category B. This is a choice that those schools have made. It is, if you like, the purest form of the voluntary model. They wish to have a relationship with the Department, the education and library boards and, in due course, ESA that does not involve any capital funding. Of course, they receive revenue funding, as other schools do. However, they prefer to have that — I use the word advisedly — independence from educational authorities.
4383. **Mr Lunn:** If the scheme of management and scheme of employment situation goes against the perceived wishes of the grammar schools, they will be drawn into the system to some extent anyway.
4384. **Mr Stewart:** They will, in that sense, yes, but not in relation to capital funding. If those schools wish to continue to be solely responsible for their own capital development, it is absolutely their right to do so.
4385. **Mr Lunn:** You say that it is bizarre, but I can sort of understand where GBA and RBAI are coming from. It is another one of those situations where it does not need to be written into the Bill but what harm would it do? If everybody is content, fair enough. I note that we informally agreed to reserve our position the last time. We probably got the same advice.
4386. **The Chairperson:** OK, members. We are not content that there is agreement on clause 20. Is that the view of all members?
4387. **Mr Kinahan:** Would you say that again?
4388. **The Chairperson:** Are we agreeing to clause 20 as set out?
4389. **Mr Lunn:** Is it one of those situations where, as Chris suggested, or perhaps you did earlier on, the Minister might be asked to make a statement about it?
4390. **The Chairperson:** If members wish that that should be the case, we could reflect that in our report.
4391. **The Committee Clerk:** Just to be clear, Chair, what assurance would members like to have from the Minister?
4392. **Mr Lunn:** It would be helpful to both bodies that clearly have a concern, even if it is unfounded, were the Minister to reiterate what is in the departmental response. That is an internal response. It would be helpful if he said it during the passage of the Bill at some stage. We have already said that there may be situations where we would like the Minister to clarify something.
4393. **The Chairperson:** We are seeking ministerial assurance. On that basis, we will agree clause 20.
- Members indicated assent.*
4394. **The Chairperson:** Thanks for that, Trevor.
- Clause 21 (ESA to pay superannuation benefits of teachers)**
4395. **The Chairperson:** Clause 21 transfers responsibility for the payment of teachers' pensions benefits from the Department to ESA. The Committee informally agreed that it was content with the clause as drafted.
4396. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.
4397. Clause 21 agreed to.
- Clause 22 (Ancillary powers of ESA)**
4398. **The Chairperson:** Clause 22 allows ESA, subject to other statutory provisions, to do anything that appears to it to be conducive or incidental to the discharge of its functions. The Committee previously noted the Department's response, comparing ESA's powers with those of the Charities Commission.

4399. The Committee previously reserved its position. I think that it was probably around the wording of clause 22(1):

“Except as otherwise provided by any statutory provision, ESA may do anything that appears”.

4400. A number of concerns were raised around the phraseology “may do anything”. Some suggested an amendment with the words “with departmental approval”. Others said that if we did not want ESA to do something, would we want the Department to be doing it? It is an out of the frying pan and into the fire situation.

4401. I took a note at the time, in the margin of my well-worn copy of the Bill, which is probably a comment from Chris. It says “cannot invent new functions”. That is part of what is being alluded to here, although I think that some members are still concerned about the power of clause 22.

4402. Do members have any comments? I remind members that we previously reserved our position on this clause. You will see that a number of comments were made by different bodies. The Irish National Teachers’ Organisation said that the Bill should be amended to include clear guidelines as to the limits of the proposed increased autonomy for schools and that those limits should make it impossible for the free school, academy and chartered schools variants to come into being. NICIE said the opposite.

4403. **Mr Kinahan:** Will you clarify what you were saying just now about functions?

4404. **The Chairperson:** I am trying to reflect the concerns raised. Clause 22 states:

“Except as otherwise provided by any statutory provision, ESA may do anything”.

4405. Some suggested that the words “with departmental approval” should follow “may do”. However, that raises the concern that we would give both organisations, the Department and ESA, too much power. The point was made by Chris, at the time, that this does not

mean that ESA could create or invent new functions.

4406. **Mr Stewart:** Chair, that is a core point. The Library Authority has an identically worded power. The core business of the Library Authority is to provide library services. So it can do anything “conducive or incidental” to the running of library services. ESA, if given this power, would operate under the same stricture. It could do anything incidental or conducive to its other functions, such as approving employment schemes, approving schemes of management, delivering the schools library service, providing support services to schools and carrying out area planning. However, it could not, without the approval of the Assembly, take on additional statutory functions.

4407. **The Chairperson:** So it cannot take on additional functions without the consent of the Assembly.

4408. **Mr Stewart:** Even “consent”, or my use of the word “approval”, is wrong. The Assembly would have to decide to legislate for such an occurrence. It is not that ESA could do so and then ask permission, or even seek forgiveness. The statutory functions of ESA are laid down in legislation, and only the Assembly can change those.

4409. **The Chairperson:** Although the clause states:

“Except as otherwise provided by any statutory provision, ESA may do anything”.

4410. **Mr Stewart:** Again, Chair, that is a qualification. It means that ESA could not take unto itself functions that are assigned elsewhere in legislation.

4411. **Mr Kinahan:** The Minister or the Department could do so.

4412. **Mr Stewart:** The Minister could seek to legislate at any time, but that would go through the normal legislative process. I really cannot overemphasise that this is a standard provision that legislative counsel would insert, even without being asked, into any draft Bill to establish a new non-departmental public body.

4413. **Mr Kinahan:** At our previous meeting, I asked for examples, and you gave those of the Charities Bill and Libraries Bill. Do any other Bills contain a similar clause but one that has had further checks and balances placed on it?
4414. **Mr Stewart:** Not that I am aware of. I have never before encountered this sort of concern about that sort of clause.
4415. **The Chairperson:** Let me put this as a suggestion of what we could agree, members. I take the point that Chris is making, and I reiterate that we respect the advice given to the Committee and the manner in which Chris has always, to the best of his ability, given the Department's views. The way in which we have been informed is a given. Sometimes, however, that does not dilute people's concerns. Is it possible that we could amend clause 22 to take out everything after "may do" and reiterate what is in (a), (b), (c), (d) and (e)? We could take out the part that is seen to be the most difficult for people to get their head around and not include:
- "may do anything that appears to it to be conducive or incidental to the discharge of its functions."*
- If we just take that out, it would read:*
- "Except as otherwise provided by any statutory provision, ESA may*
- (a) enter into agreements;*
- (b) subject to Article 106 of the 1986 Order, acquire or dispose of property;*
- (c) subject to the approval of the Department, form bodies corporate or acquire or dispose of interests in bodies corporate;*
- (d) carry out, or commission or assist in the carrying out of, research;*
- (e) co-operate with, or provide advice to, other bodies established by or under a statutory provision."*
4416. Would that help to provide at least some satisfaction that we are not giving ESA a blank cheque? When people see the phrase "do anything", you can imagine the headlines about us creating an organisation that is Pol Pot for the 21st century.
4417. **Mr Lunn:** OFMDFM. *[Laughter.]*
4418. **The Chairperson:** I could not possibly comment on whether there is a comparison.
4419. **Mr Stewart:** I must say, Chair, that is not one of the more flattering comparisons. *[Laughter.]*
4420. **The Chairperson:** No, it is not.
4421. **Mr Stewart:** Chair, may I make a suggestion? I understand the thrust of what you suggest, and that would certainly be technically possible as an amendment. That would then put the onus on the Department. If there is anything that we think ought to be on the list of things that ESA can specifically do, we should, of course, put that in. If you are minded to move in that direction, members may want to consider giving the Department the power to modify clause 22 by order subject to affirmative resolution. The reason for suggesting that is this: if, at some point in the future, we think of something that needs to be added to the list and do not have such a modifying power, we would need primary legislation, perhaps to allow ESA to sign a contract for its headquarters' catering arrangements.
4422. **Miss M McIlveen:** I agree with your comments, Chair. I am just concerned by what Chris said about our ending up with an amended clause that is amended just for the optics but does not really alter the original clause.
4423. **Mr Stewart:** I would reassure Michelle by saying that the effect would be profound. It would mean that rather than a power to do anything, however qualified, ESA would have a power to do a specific list of things. I am suggesting that you may consider a power for the Department to add to that list. However, even that power is qualified by the requirement of the affirmative Assembly control procedure for there to be a vote in the Assembly in favour of such

- change before the Department could add to the list.
4424. **The Chairperson:** I will just try to clarify that. Under the current power of direction — the infamous article 101 — if the Department wished to direct a board to do a, b or c, it could do so.
4425. **Mr Stewart:** It could direct a board in the discharge of its functions but could not use that power to create additional functions.
4426. **The Chairperson:** Right, and this would be the same. However, you are saying that if the Department wanted to create a new function, and we were minded to take this element out and put in a new paragraph (f), that new paragraph would allow the Department to give direction but subject to Assembly control.
4427. **Mr Stewart:** I think that it is possible to do that without departing from the fundamental constitutional position, which is that a body such as ESA should not have any statutory functions other than those assigned to it by the Assembly.
4428. **Mr Kinahan:** I like the amendment that limits the functions to a list. I wonder whether there is another way of looking at trying to alter the phrase “may do anything”.
4429. **The Chairperson:** I also take Michelle’s point. Is there a halfway house through creating paragraph (f)? Clause 22 would then read:
- “Except as otherwise provided by any statutory provision, ESA may”.*
4430. That would be followed by paragraphs (a), (b), (c), (d) and (e). Finally, (f) would read:
- “or appears to be conducive or incidental to the discharge of its functions.”*
4431. However, would we, having simply taken out the words “may do anything”, still be in the same place?
4432. **Mr Stewart:** That might give rise to Michelle’s concern because I think that it would be just the same again.
4433. **Miss M McIlveen:** Maybe I am just overly suspicious.
4434. **The Chairperson:** I would never have picked that up.
4435. **Miss M McIlveen:** Will you come back with an alternative so that we can look at it again?
4436. **Mr Stewart:** I can put this point to the Minister, but it is certainly technically possible to restrict the clause from its current provisions so that ESA is entitled to do things that are on a list in the clause. You could stop at that point. However, I suggest that you may also wish to consider a power for the Department to add to the list but subject to the stronger of the Assembly control mechanisms. You might expect someone in my position to suggest that as a matter of administrative convenience because, if the need to change the list were to arise without our having such a power, the Minister of the day would have to bring primary legislation back to the Floor of the Assembly simply to add to a list of administrative functions that a body might do.
4437. **Mr Lunn:** I have listened to all of this, and I cannot help thinking that if it were left as a list, something not on the list would nearly be bound to pop up.
4438. **Mr Stewart:** Precisely.
4439. **Mr Lunn:** What I do not like about the clause is the fact that the very first line states that ESA can “do anything” it likes — even start a world war.
4440. **Mr Stewart:** That does not currently feature in the business case. [Laughter.]
4441. **Mr Lunn:** That goes back to what Michelle said. It might be worthwhile considering adding a paragraph (f) that encapsulated something reasonably vague just to allow for what you might call minor and consequential matters.
4442. **Miss M McIlveen:** If it is vague, are you not going back to the situation in which the Department and ESA could do anything?

4443. **Mr Lunn:** It depends how you word it.
4444. **Miss M McIlveen:** It would then be ambiguous, so ESA would be able to —
4445. **Mr Lunn:** Paragraph (f) could state that ESA could take actions “conductive or incidental” to the discharge of its functions. It would not state that ESA could do anything. Alternatively, it could state that ESA could take actions that are “clearly conducive or incidental.” There are different ways to put a few words together.
4446. **Mr Stewart:** It is possible to amend the clause or draft a different clause that avoids the particularly frightening pair of words “do anything”, but the net effect would be the same. The Assembly will have to decide whether it wishes ESA to have a power that is limited to a specified list or a power that has some form of catch-all in it, however it is worded. It is not difficult to make the cosmetic change to take away the particularly scary form of words, but the real decision is whether you leave a catch-all or not.
4447. **Miss M McIlveen:** By having a catch-all, we are back to the same situation, which means that any change is really for the optics. I think that we have to be careful. I would like to see the alternative form of words and then make a decision.
4448. **Mr Kinahan:** With negative resolution.
4449. **The Committee Clerk:** With affirmative resolution. If I have understood correctly, members would like to park clause 22 for today and come back to it. You want to consider an amendment that would take out the words after “ESA may” up to “(a) enter into agreements” and add a line at the end of the clause that states:
- “The Department may, subject to order, allow ESA to undertake other functions”*
4450. That would, however, be subject to —
4451. **Miss M McIlveen:** I would be concerned about that line.
4452. **The Committee Clerk:** Yes, but it would be subject to affirmative resolution, so

the Assembly would have its say, and that would strike the balance that you want. Members feel that it is a balance between ESA having the power to be able to run its organisation and having Assembly controls that prevent ESA from being able to “do anything”, even if it appears to be conducive or incidental to the discharge of its functions.

4453. I will speak to the Bill Office and have that tomorrow, I hope.
4454. **Mr Kinahan:** How long does affirmative resolution take to get through?
4455. **The Committee Clerk:** The statutory rule takes a couple of weeks, but it automatically goes to the Assembly for debate and a vote.
4456. **Mr Rogers:** My question is basically on the same point. Whatever way the words are reworked, the reworking needs to reduce ambiguity and suspicion. No matter who you talk to, the phrase that jumps out is that ESA “may do anything” it likes. Along with that reworking of words, maybe we should have a ministerial assurance about it.
4457. **The Chairperson:** Some would argue that —
4458. **Mr Craig:** No comment.
4459. **The Chairperson:** We have had a lot of those assurances in the past, across the piece. So are we happy to park clause 22?

Members indicated assent.

Clause 23 (Power of ESA to undertake commercial activities)

4460. **The Chairperson:** Obviously, our concern about clause 22 means that we have concerns about clause 23 because this leads us into an area where, at the end of the day, the Department has considerable power over the commercial activities to be undertaken by ESA. Clause 23(5)(b), for example, provides:

“the Department may, by notice served on ESA -

(i) revoke the approval; or

- (ii) modify the approval, whether by modifying the particular commercial activities or any conditions specified therein.”
4461. That provision applies :
- “(5) Where it appears to the Department that ESA—
- (a) has failed to comply with any conditions subject to which an approval under this section has been granted, or
- (b) has in undertaking any commercial activity in pursuance of such an approval contravened subsection (4)”.
4462. Subsection 4 relates to the undertaking of commercial activities.
4463. There is a wider concern about the definition of “commercial activities”. Is the procurement of services deemed a commercial activity? Does ESA’s ability to provide training and advice also come under the generic term “commercial activity”? The Bill does not specify what commercial activity is. It just uses the phrase and leaves it there.
4464. **Mr Stewart:** It is, as you say, Chair, generic. The fact that it is not defined means that the term would carry its ordinary meaning. The other provisions in that clause, such as requiring departmental approval and the Department’s ability to restrict that, are there to ensure that such commercial activity as ESA engages in is not in any way detrimental, or an alternative, to its main business. Were ESA, for example, to develop a particularly good approach to staff training and development or to the delivery of HR functions that another public or even private sector organisation — say a district council or health organisation — wished to procure from ESA, the clause would allow for that to be done. It would allow ESA to recoup the costs of doing so and perhaps contribute to a greater overall efficiency in the public service of the provision of these sorts of services. However, it is important that the provisions allowing the Department to keep control of that remain so that ESA does not drift off into becoming a service-provision organisation but retains its core mission of being the Education and Skills Authority.
4465. **The Chairperson:** Any comments?
4466. **Mr Lunn:** I note that we previously agreed that we were content with this clause.
4467. **Mr Stewart:** It does not seem to have lasted, Trevor.
4468. **The Chairperson:** Some things change.
4469. **Mr Lunn:** The same wording is used at clause 23(3)(a):
- “to do anything which appears to ESA to be conducive or incidental to the exercise of any power”.
4470. **The Chairperson:** Yes. I think that I would be more content to wait to see the outcome of clause 22 before we decide on clause 23 because they are, to use a well-worn phrase, inextricably linked. Is that OK?
- Members indicated assent.*
4471. **Mr Kinahan:** We will have a very busy Assembly in the future, with lots of affirmative resolutions.
4472. **The Chairperson:** Well, that will keep us busy. I draw members’ attention to clause 23(7) and 23 (8), which state:
4473. 7) Any approval or notice under this section shall be in writing.
4474. (8) In this section “commercial activity” includes—
4475. (a) the carrying out of work for any other body or person;
4476. (b) the supplying of goods and services to any other body or person; and
4477. (c) the developing and exploiting of ideas and the exploiting of intellectual property.
4478. I would love to know what “intellectual property” means. I am not going to say what was on my mind, and I will not mention planes.
4479. **Miss M McIlveen:** You started, so you really should finish.

4480. **The Chairperson:** Is a private jet intellectual property?
4481. **Mr Stewart:** No, Chair, it is not.
4482. **The Chairperson:** Members will know that I am referring to the hire, by another organisation, of a private jet.
4483. **Mr Stewart:** Let me assure you that the Department would not give approval to ESA being involved in any way in the procurement or leasing of aeroplanes. An example of intellectual property might be a particularly good or effective training course.
4484. **The Chairperson:** Yes, it is not property in the sense of a material building; it is property in the sense of ideas.
4485. **Mr Stewart:** Something that might be patented or copyrighted.
4486. **The Chairperson:** We will reserve judgement on the clause until Chris comes back tomorrow.
4487. Do members have any more concerns about clause 23, or do they all relate to what Sean said earlier about the phrase “do anything”? If we resolve that, we may have fewer difficulties with clause 23.
4488. **Mr Hazzard:** Are you making the link?
4489. **The Chairperson:** Yes, maybe I am not making it very well.
4490. Are members happy to leave it there?
4491. **Mr Craig:** Chris, is there a timescale attached to that? I believe that you cannot hold on to intellectual property for ever.
4492. **Mr Stewart:** This provision would not affect the law generally on intellectual property and the rights of intellectual property owners. It simply uses the phrase as an example of something that ESA might make available on a commercial basis.
4493. **Mr Craig:** Will the 10-year rule still apply?
4494. **Mr Stewart:** If there is a 10-year rule, it will still apply.
4495. **The Chairperson:** Members, with your indulgence, we will draw a line there. That will give the Committee Clerk and his staff time to do the necessary work and rehearse how we have come from clause 1 to clause 23. Some members want to be in the House, I am meeting at 12.00 noon the chair of the all-party working group on science, and there is a chairpersons’ liaison meeting at 12.30 pm. With your permission, we will suspend proceedings and resume at clause 24 tomorrow morning.
4496. **The Committee Clerk:** There will be quite a lot to do tomorrow, so it will be a long meeting, but it will be the final Committee meeting on the Education Bill. I ask members to prepare for a long session that will go into the afternoon.
4497. **The Chairperson:** Are members content that we suspend the meeting?
- Members indicated assent.*

20 March 2013

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:

Mr Peter Burns *Department of Education*
 Mr Chris Stewart

4498. **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.

4499. On a point of accuracy, does that change the decisions that were made yesterday on the employment elements?

4500. **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.

4501. **The Chairperson:** Chris, do you want to make any comment.

4502. **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.

4503. **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 —

4504. **Mr Stewart:** It must have been some form of computer glitch, Chairman.

4505. **The Chairperson:** Another technical error at the Department. There is probably a rationale for it.

4506. **Mr Kinahan:** Chris, is there any hint of movement on the heads of agreement? Anything that we have just shows that discussions are ongoing.

4507. **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.

4508. **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.

4509. 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.

4510. 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.”

4511. That is what is before us. Are members content with the recommendation, as worded?
4512. **Mr Kinahan:** Is there any limit on “resources”? Is it every form of teaching through to grounds, classrooms, and so on?
4513. **The Committee Clerk:** It is up to members. Do members want it to be limited?
4514. **Mr Kinahan:** No. It should be as wide as possible.
4515. **The Committee Clerk:** I was being fairly vague.
4516. **The Chairperson:** Are we happy enough? Agreed?
4517. **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.
4518. **Mr Hazzard:** What about “education”?
4519. **The Chairperson:** Could we drop “services” and put in “education”?
4520. **Mr Stewart:** That would fix it.
4521. **The Chairperson:** Are members happy enough?

Members indicated assent.

Clause 22 (Ancillary powers of ESA)

4522. **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.
4523. **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.
4524. **The Chairperson:** Any comments? I will give you a minute to consider that.
4525. 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?
4526. **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.

4527. **The Chairperson:** It could not just be done by regulation?
4528. **Mr Stewart:** It would be by subordinate legislation, but not at the whim of the Department; only with the specific approval of the Assembly.
4529. **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.
4530. **The Chairperson:** Is there agreement that the Committee is content with the amendment to clause 22 as drafted?
Members indicated assent.
4531. **The Chairperson:** Is the Committee content, subject to the consequential amendment, with clause 22 as amended?
4532. **Mr Rogers:** I just have one quick query. Clause 22(2)(e) reads:
4533. **“co-operate with, or provide advice to”.**
4534. Does that cover consultation and negotiations with unions on matters with regard to the discharge of the functions of ESA?
4535. **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.
4536. **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.
4537. **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.”
4538. 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.
4539. **Mr Kinahan:** Thank you.
4540. **The Chairperson:** Are there any other comments?
4541. **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?
4542. **The Committee Clerk:** Correct.
4543. **Miss M McIlveen:** Have you not essentially removed subsection 1?
4544. **Mr Stewart:** The net effect of the amendment would be to introduce a new subsection 1.
4545. **Miss M McIlveen:** What would that be?
4546. **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.
4547. **Miss M McIlveen:** Is it not, essentially, just saying exactly the same thing?

4548. **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.

4549. **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.

4550. **Mr Stewart:** If that makes it more credible, we welcome that. *[Laughter.]*

4551. **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.

4552. **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.

4553. **Mr Stewart:** Would members please not tell the Minister that we gave the impression that we were conciliatory? *[Laughter.]*

4554. **The Chairperson:** The reality is it is in the Hansard report. *[Laughter.]*

4555. **Mr Stewart:** We are in trouble now, Chairman.

4556. **Miss M McIlveen:** You will forgive me for being suspicious. I have been on the Committee for a very long time.

4557. **The Chairperson:** After six years, you do get suspicious.

4558. Is the Committee content, subject to the consequential amendment, with clause 22 as amended?

Members indicated assent.

4559. **The Chairperson:** I just want to thank the Bill Office for its help with that clause. That was useful.

4560. **Clause 23 (Power of ESA to undertake commercial activities)**

4561. **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”.

4562. An amendment to deal with the concerns has been tabled. Peter, do you want to talk us through it?

4563. **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.”

4564. 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.

4565. **Mr Kinahan:** Subject to the Minister agreeing.

4566. **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.

4567. **Miss M McIlveen:** Given the form that Chris is in today, I think that he would agree to anything.

4568. **Mr Stewart:** Chris is not the Minister. *[Laughter.]*

4569. **Miss M McIlveen:** I think we have worn him down.

4570. **The Chairperson:** The wording is:

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

4571. 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)?

4572. **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.

4573. **Mr Rogers:** That was the point that I wanted clarified.

4574. **The Chairperson:** Are you happy enough?

4575. **Mr Rogers:** Yes.

4576. **The Chairperson:** OK. Any other comments on that?

4577. **So, at the end of (a) we would have:**

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

4578. **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.

4579. **The Chairperson:** Is there consensus that the Committee is content with the amendment to clause 23 as drafted?

4580. **Mr Kinahan:** What then happens to clause 23(3)(b)?

4581. **The Committee Clerk:** We renumbered it (3)(a).

4582. **Mr Kinahan:** It is as simple as that; so it does not exist.

4583. **The Chairperson:** OK.

4584. Is the Committee content with the amendment to clause 23 as drafted?

Members indicated assent.

4585. **The Chairperson:** Is the Committee content, subject to the consequential amendment, with clause 23 as amended?

Members indicated assent.

4586. **The Chairperson:** That deals with the issues that we raised yesterday about those two clauses.

Clause 24 (Area education plans)

4587. **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.

4588. 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.

4589. **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.

4590. **Mr Hazzard:** Did we ever get word back from the Department on the legislative competence of working with southern authorities?

4591. **The Committee Clerk:** I think that we did, Chair. It indicated that such amendments would not be competent.

4592. **Mr Hazzard:** OK; no problem.

4593. **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.
4594. **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”.*
4595. 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?
4596. **Mr Stewart:** Yes. I imagine that there will be more than five plans, and, therefore, more than five areas.
4597. **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.
4598. **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.
4599. **The Chairperson:** Do members have any further comments?
4600. **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.
4601. **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.
4602. **The Chairperson:** Do we want to take clauses 24 to 30 collectively? Or, do we want to deal with them individually?
4603. **Mr Kinahan:** Take them all through collectively.
4604. **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”.*
4605. 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.
4606. **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?

4607. **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.
4608. **Mr Rogers:** Thanks, Chris. That is helpful.
4609. **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?
4610. **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.
4611. **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.
4612. **The Chairperson:** Are there any other comments?
4613. **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?
4614. **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.
4615. **Mr Hazzard:** Danny has highlighted the need, then.
4616. **Mr Kinahan:** It works both ways.
4617. **Mr Hazzard:** Exactly. There is a need, then.
4618. **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.
4619. **The Chairperson:** Are there any other comments?
4620. 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.
4621. **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.
4622. **The Chairperson:** Danny.
4623. **Mr Kinahan:** No, I was not on this.
4624. **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.
4625. **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.
4626. **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.
4627. **The Chairperson:** There is a proposal from Chris. Does anybody second that?
4628. **The Committee Clerk:** It does not need a seconder.
4629. **The Chairperson:** It does not need a seconder. OK.
4630. **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.
4631. 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.
4632. **The Committee Clerk:** The motion falls.
4633. **The Chairperson:** That will be reflected in the report.
4634. **The Committee Clerk:** Yes.
4635. **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.
4636. **The Chairperson:** So do we want to reserve our position on clauses 24 to 30?
4637. **Mr Kinahan:** That is my feeling.
4638. **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”.*
4639. **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.
4640. **The Chairperson:** The current legal definition of “rural” is anything outside the 30 mile per hour limit of the two cities.
4641. **Mr Kinahan:** Do we need to define it in our own way? Do we need a new definition of “rural”?
4642. **Mr Rogers:** No, I think that Mervyn’s definition is fine: outside the 30 mile per hour limit and outside Belfast and Derry.
4643. **The Chairperson:** That is the definition currently.
4644. **Mr Rogers:** Is the Department’s definition not just outside Belfast and Derry?
4645. **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”?
4646. **Mr Stewart:** I would have to check that, Chairman. It is not something that I am familiar with.
4647. **The Chairperson:** That is my understanding.
4648. **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.
4649. **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.
4650. **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.
4651. **The Chairperson:** In relation to clause 30 —
4652. **Mr Kinahan:** It is the whole lot of them. They all have strength hidden in them.
4653. **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?
4654. **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.
4655. **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.
4656. **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.
4657. **The Chairperson:** In clause 30:
“The Department may by regulations make provision”
4658. **Those would be subject to the affirmative —**
4659. **The Committee Clerk:** It is currently negative.
4660. **The Chairperson:** It is currently negative, is it not?
4661. **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.
4662. **Mr Kinahan:** So, do we put affirmative all the way through?
4663. **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.
4664. **Mr Hazzard:** Is there consensus on what “rural proofed” means, definitively?

4665. **Mr Stewart:** There would be guidance on that from the Department of Agriculture.
4666. **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?
4667. **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.
4668. **Mr Kinahan:** OK.
4669. **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.
4670. **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.
4671. **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.”
4672. **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.
4673. **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?
4674. **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?
4675. **The Chairperson:** Revision of plans under clause 25? No?
4676. **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.

4677. **Mr Rogers:** It may, but it may?

4678. **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.

4679. **The Chairperson:** Sean, are you happy enough?

4680. **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.

4681. **Mr Rogers:** But you would think that the work done so far would at least be a good starting point.

4682. **Mr Stewart:** Again, I do not want to give the impression that it would all simply be overturned when ESA arrives.

4683. **The Chairperson:** OK. Are we agreed on that approach, members?

Members indicated assent.

4684. **The Chairperson:** The whole issue of area planning will obviously be ongoing.

Clause 31 (Dissolution of certain statutory bodies)

4685. **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.

4686. **Mr Stewart:** Sine qua non, Chairman.

4687. **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)

4688. **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?

4689. **Mr Stewart:** Unfortunately not, Chairman. It is still being worked on.

4690. **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.

4691. Clause 33 (Schemes of management)

4692. **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.
4693. 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.
4694. **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.
4695. **The Chairperson:** That is in reference to —
4696. **Mr Hazzard:** I am on 33.
4697. **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?
4698. **Mr Stewart:** That would happen anyway. There is consultation ongoing with sectoral bodies and trade unions.
4699. **The Chairperson:** We have only seen the draft ones, and they are out for consultation.
4700. **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.
4701. **The Chairperson:** Right, but it would be a formal consultation for a 12-week period?
4702. **Mr Stewart:** Yes.
4703. **Mr Kinahan:** Who else is consulted? Unions and governors are consulted, but there is no scheme to talk to teachers outside the union system.
4704. **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.
4705. **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.
4706. **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.
4707. **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.”
4708. 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.”
4709. 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.”

4710. Are members generally content that, if those amendments were made, they would find favour?

Members indicated assent.

4711. **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.

4712. **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.”

4713. 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).

4714. **Mr Kinahan:** That should apply to all sectors. There should be no preference.

4715. **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”.

4716. That is what it should be. That is called equality or parity of treatment.

4717. **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.

4718. **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.

4719. **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.

4720. **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.

4721. **The Chairperson:** Sorry. Where are we at, Danny?

4722. **Mr Kinahan:** We are on page 18. It is clause 34(2).

4723. **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.

4724. **Mr Kinahan:** I am happy with that, but I somehow think that this Committee —

4725. **The Chairperson:** Yes, I see what you mean.

4726. **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?

4727. **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.
4728. **Mr Kinahan:** If you follow my logic, though, to have —
4729. **Mr Stewart:** No hint of conciliation there at all, Chairman. It is now absolutely gone.
4730. **The Chairperson:** Your conciliation is gone out the door.
4731. **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.
4732. **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.
4733. **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?
4734. **Mr Kinahan:** I am happy with that.
4735. **The Chairperson:** Our concerns relate to clause 33(5) and 33(6), because those deal with the same issue.
4736. **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.
4737. **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.
4738. 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.
4739. 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.
4740. **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?

4741. **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.
4742. **Mr Rogers:** It does, yes.
4743. **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.
4744. **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.
4745. **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.
4746. **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).
4747. **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.
4748. **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.
4749. **The Chairperson:** How members feel will be reflected. That should be noted.
4750. **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?
4751. **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.
4752. We have a problem with mobile phone interference. Apparently, Hansard cannot hear us at all.

4753. **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.

4754. **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)

4755. **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.

4756. 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?

4757. **Mr Lunn:** I cannot think of any reason why anybody would find fault with clause 38, to be honest.

4758. **The Chairperson:** We have informally agreed it.

4759. **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.

4760. **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.

4761. **Mr Lunn:** I completely agree with you. It just says:

“achievement of high standards of educational attainment by pupils”.

4762. 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.

4763. **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?

4764. **Mr Stewart:** He has.

4765. **Miss M McIlveen:** I know that it says “but”, but, at the same time, he was going to give it further consideration.

4766. **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.
4767. **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?
4768. **Miss M McIlveen:** I am not sure what comfort a ministerial assurance actually gives.
4769. **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.
4770. **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.
4771. **The Chairperson:** How could we summarise that and amend clause 38
- to reflect it? How would you suggest doing that?
4772. **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.
4773. **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.
4774. **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.
4775. **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?
4776. **Mr Rogers:** Yes. We do not want to narrow educational achievement down to five As to Cs.
4777. **The Chairperson:** That is the system that we have.
4778. **Mr Kinahan:** Could it be suited to the school? You do not want any school to be weaker than any other.
4779. **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?

4780. **Miss M McIlveen:** I think that that is important, even when we take into context the conversations that we may have on the inspectorate.

4781. **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.

4782. **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.”

4783. 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.

4784. **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)

4785. **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.

4786. 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)

4787. **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)

4788. **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?
4789. **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.
4790. **The Chairperson:** Yes; the TRC had never had nomination rights to the boards of governors.
4791. **Miss M McIlveen:** That just proves that I was listening that day.
4792. **The Chairperson:** Do you have any other comment on that, Chris? Obviously, that is the legal position on the issue.
4793. **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.
4794. **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 —
4795. **Mr Stewart:** I hope that he did not say that.
4796. **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.
4797. **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.
4798. **Mr Lunn:** Why the exclusion of controlled integrated primary schools?
4799. **Mr Stewart:** They have a particular composition of boards of governors that is unique.
4800. **Mr Lunn:** However, if you have two controlled integrated primary schools, with a unique format of board of governors, they are both the same.
4801. **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.
4802. **Mr Lunn:** I still wonder why it is excluded in that way.
4803. **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.
4804. **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.
4805. **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.
4806. **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.

4807. **Mr Stewart:** When it is necessary to re-enact, by and large, we follow the existing wording.

4808. **Mr Lunn:** That could be a case for a further amendment.

4809. **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.

4810. **The Chairperson:** We would support them on it.

Clause 42 (Management of maintained nursery schools)

4811. **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)

4812. **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)

4813. **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.

4814. 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.

4815. 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.”

4816. On clause 46, the suggested amendment is to:

“Include a requirement to send inspection reports to sectoral bodies”.

4817. That is not the case at the moment, although they are all on the website.

4818. **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.

4819. **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”.

4820. **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.

4821. **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.

4822. **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.”

4823. 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.

4824. **Mr Kinahan:** We are pretty close to supporting that, but I would like to hold back.

4825. **Mr Rogers:** Chris says that the purpose here is to put the inspectorate on a sound legislative footing. Who inspects the inspectorate?

4826. **Mr Stewart:** This Committee.

4827. **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.

4828. 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.

4829. 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.
4830. 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.
4831. **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?
4832. **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.
4833. 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.
4834. 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.
4835. **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.
4836. 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.
4837. **The Chairperson:** Not for the first time.
4838. **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.
4839. **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.
4840. **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?
4841. **Mr Stewart:** Were you to take out the repeal of the current inspection provisions — yes. They are in article 102 of the 1986 order.
4842. **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.
4843. **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.
4844. **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.
4845. **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?
4846. **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.
4847. 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.
4848. **The Chairperson:** Thank you. Any other comments? Who inspects the inspectorate? We do.
4849. **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?
4850. **Mr Stewart:** The inspectorate operates an informal complaints procedure. Members may wish to consider whether they wish to put that on a formal basis.
4851. **The Chairperson:** Chris, you also said that that would require a repeal.
4852. **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.
4853. **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.
4854. **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.*
4855. **The Committee Clerk:** Right, there is your recommendation.
4856. **The Chairperson:** It is the Committee's decision. In light of that, will that be the recommendation in the report?
4857. **The Committee Clerk:** Yes.
4858. **The Chairperson:** Yes, and we will still reserve our position on clauses 45 to 48. Agreed?
- Members indicated assent.*
4859. **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."*
4860. 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.*
4861. **Mr Lunn:** Did I hear earlier that those inspection reports are on their website anyway?
4862. **The Chairperson:** Yes.
4863. **Mr Lunn:** The Minister's proposed amendment is entirely irrelevant.
4864. **The Chairperson:** Yes, the reports go on the website, but there is no legal requirement to do that.
4865. **Mr Kinahan:** Is it not an issue that they go on too early in some cases?
4866. **The Chairperson:** In some cases, they do not go on for a long time.
4867. **Mr Kinahan:** There is that too.
4868. **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.
4869. **Mr Lunn:** The Minister's suggested amendment does not alter the situation at all.
4870. **The Chairperson:** No.
4871. **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?
4872. **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 —

4873. **The Chairperson:** OK, members. My appreciation goes to the staff who organised the food. That was very helpful.

Clause 49 (Interpretation of this Part)

4874. **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.

4875. The Committee informally agreed that it was content with the clause as drafted. — *[Inaudible due to mobile phone interference.]*

4876. **The Committee Clerk:** The Committee reserved its position on — *[Inaudible due to mobile phone interference.]*

4877. **The Chairperson:** Chris, do you have any further comments on this clause?

4878. **Mr Stewart:** No, Chair. Unfortunately, the other information that the Committee requested is still being worked on.

4879. **The Chairperson:** OK. Was it only clause 49 that the Committee informally agreed?

4880. **The Committee Clerk:** — *[Inaudible due to mobile phone interference.] reserved.*

4881. **The Chairperson:** The Committee informally agreed to clause 49, but reserved its position on clauses 50 to 54. Is that right?

4882. **The Committee Clerk:** Yes. We were waiting the response from the Department on the role of CCEA.

4883. **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.

4884. **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.

4885. **The Chairperson:** We have not received anything. OK, members.

4886. Is the Committee content, subject to the consequential amendment, with clause 49 as drafted?

Members indicated assent.

4887. **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).

4888. 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)

4889. **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.

4890. The Committee informally agreed that it was content with this clause and all the clauses in this Part of the Bill as drafted.

4891. **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.

4892. **Mr Stewart:** Is that in the Hansard report? *[Laughter.]*

4893. **Miss M McIlveen:** It is.

4894. **The Chairperson:** Yes.

4895. **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.

4896. **The Chairperson:** We have that.

4897. **Mr Lunn:** Have we got it?

4898. **The Chairperson:** Yes.

4899. **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.]*

4900. **Mr Lunn:** Have we seen it?

4901. **The Chairperson:** It should be in your correspondence from last week.

4902. **Mr Lunn:** You cannot read them all.

4903. **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)

4904. **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.

4905. 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.

4906. Are there any comments on clause 60? Is the Committee content, subject to consequential amendments, to reserve its position on clause 60?

4907. The clause places a general duty on the Department and DEL and gives the six elements to that. Are there any comments on that?

4908. **Mr Hazzard:** I would like some clarity on why we are reserving our position on this clause. What is the issue?

4909. **The Chairperson:** That is what I am asking?

4910. **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.

4911. **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.)

4912. **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.

4913. **Mr Lunn:** Sorry, just for clarity, under clause 61, are grants not to be paid to voluntary or grant-maintained integrated schools?

4914. **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)

4915. **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.

4916. 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.

4917. **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?

4918. **Mr Kinahan:** Same comment as before — *[Inaudible due to mobile phone interference.]*

4919. **The Chairperson:** — *[Inaudible due to mobile phone interference.]*

4920. **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.]*

4921. **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"?

4922. **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.

4923. **Mr Kinahan:** The answer I got to a question for written answer was that OFMDFM would do it at the appropriate time.

4924. **Mr Lunn:** I did not get that.

4925. **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.

4926. **Mr Lunn:** Until they manage to agree something.

4927. **The Chairperson:** OK? Thank you.

Clause 63 (Sectoral bodies)

4928. **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?

4929. 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.

4930. **Mr Hazzard:** The Catholic definition — *[Inaudible due to mobile phone interference.]*
4931. **The Chairperson:** Is that not further on in the definition under one of the schedules?
4932. **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.
4933. **The Chairperson:** Some members would probably support it, and others would not be in favour of it.
4934. **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.
4935. **The Committee Clerk:** It sounds like the Committee is agreeing to not agree.
4936. **The Chairperson:** That is a fair assumption, yes.
4937. **The Committee Clerk:** Is that also the position on the definition of Catholic schools, Chair?
4938. **The Chairperson:** Yes.

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

4939. **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?

4940. **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.
4941. **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.
4942. **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.
4943. **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)

4944. **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.

4945. **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.

4946. **The Chairperson:** Are members happy enough?

4947. **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 —

4948. **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.

4949. **The Chairperson:** Is the Committee content with the amendment to clause 65, as drafted?

Members indicated assent.

4950. **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)

4951. **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.

4952. **Mr Stewart:** I do not think that the Minister envisages it touching clause 66.

4953. **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.

4954. **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.

4955. **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.

4956. **Miss M McIlveen:** Therefore it is essentially agreed, subject to that being sorted out.

4957. **The Committee Clerk:** It is on a without-prejudice basis.

4958. **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.

4959. **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.
4960. **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?
4961. **Mr Lunn:** Are there different views, Chairman?
4962. **The Chairperson:** Michelle expressed a different view.
4963. **Miss M McIlveen:** No, I did not; I said, for clarification, that we were in agreement, subject to —
4964. **The Chairperson:** Yes.
4965. **Mr Lunn:** I am lost, because I cannot hear Michelle very well.
4966. **Miss M McIlveen:** I was only trying to interpret what Peter said. [Laughter.]
4967. **The Committee Clerk:** It is the Clerk's fault.
4968. **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.
4969. **Mr Lunn:** Is the suggestion that we agree the clause, subject to further discussion about the GBA's suggestion?
4970. **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.
4971. **Mr Rogers:** It is consequential, because we are waiting on clarification on the heads of agreement.
4972. **The Chairperson:** Clear as mud. We have got to clause 66 without getting to this stage.
4973. **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.
4974. **The Chairperson:** I am in your hands.
4975. **Mr Lunn:** I propose that we agree clause 66 without any alterations, ifs, buts or consequential amendments.
4976. **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.
4977. **The Chairperson:** Agreed?
Members indicated assent.
4978. **Mr Hazzard:** So, is the Committee seeking to get that included?
4979. **The Chairperson:** No.
4980. **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.
4981. **Mr Lunn:** Somebody used the word "clarification" about the heads of agreement.
4982. **Mr Rogers:** I did.
4983. **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.
4984. **The Chairperson:** OK.

4985. Clause 67 (Minor and consequential amendments and repeals and revocations)

4986. **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.

4987. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

4988. Clause 67 agreed to.

Clause 68 (Commencement)

4989. **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.

4990. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

4991. **Clause 68 agreed to.**

Clause 69 (Short title)

4992. **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.

4993. Is the Committee content, subject to consequential amendment, with clause 69 as drafted?

Members indicated assent.

4994. **Mr Lunn:** It will probably have to be 2014. *[Laughter.]*

4995. **Mr Hazzard:** That is if the Committee agrees that it wants to put it through this year.

4996. **The Chairperson:** Do we want to add a caveat to the short title? I would not jest.

4997. **Mr Lunn:** I was not jesting.

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

4998. **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.

4999. Various bodies raised concerns about the composition of the ESA board and why certain people were on the board and others not.

5000. **Miss M McIlveen:** The word "status" is part of the title of schedule 1. Is that normal practice?

5001. **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.

5002. **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".

5003. What would be the implications of that?

5004. **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.

5005. **The Chairperson:** It changed the definition of Catholic schools.

5006. **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”.
5007. **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?
5008. **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.
5009. **Mr Lunn:** The big one is from the voluntary grammars, which, oddly enough, I support. Where would they fit into the present definitions?
5010. **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.
5011. **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.
5012. **Mr Kinahan:** Is it not for us all to —
5013. **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.”*
5014. **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.
5015. **The Chairperson:** Are there any changes? I think that Trevor reflected some of the issues that people have with schedule 1.
5016. **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?
5017. **Mr Kinahan:** I thought that it was subject to the Committee and the Assembly.
5018. **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.
5019. **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.
5020. **The Chairperson:** You could not be sure of that document. It is not trustworthy. I would not quote it.
5021. **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.

5022. **The Chairperson:** Members should look at the make-up of their education and library board.

5023. **Mr Kinahan:** Is that necessarily the model that we want to follow?

5024. **The Chairperson:** Parties and individuals should look at the education and library boards, which have served for all the years of their existence.

5025. **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.

5026. **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)

5027. **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.

5028. 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?

5029. **Mr Lunn:** This is another issue on which we are no further on. It is subject to discussions in another place.

5030. **The Chairperson:** OK?

Members indicated assent.

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

5031. **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.

5032. 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?

5033. **Mr Lunn:** It is the same as the previous schedule, Chair.

5034. **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.

5035. **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.

5036. **Mr Stewart:** And unconstitutional.

5037. **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)

5038. **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.
5039. 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.
5040. The Committee previously reserved its position on this schedule. Are there any comments?
5041. **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.
5042. **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)

5043. **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.
5044. 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?
5045. **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.
5046. **The Chairperson:** OK. We will correct that. Thank you.

5047. Is the Committee content to reserve its position on schedule 5?

Members indicated assent.

Schedule 6 (Minor and consequential amendments)

5048. **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?
5049. **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.
5050. Is the Committee content, subject to consequential amendments, with schedule 6 as drafted?

Members indicated assent.

Schedule 7 (Minor and consequential amendments)

5051. **The Chairperson:** The Committee previously reserved its position on schedule 7.
5052. 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.
5053. 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.
5054. **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.
5055. **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?
5056. **The Chairperson:** Yes.
5057. **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.
5058. **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.
5059. **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.
5060. **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.
5061. **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.
5062. **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.
5063. **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.
5064. **Mr Lunn:** How on earth could transformation not fit with the area plan?
5065. **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?
5066. **Mr Lunn:** May I come back on that?
5067. **The Chairperson:** Yes; you can, Trevor.
5068. **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.
5069. **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.
5070. **Mr Lunn:** We have already agreed that integrated schools are so far apart that they cannot have even have dual — *[Inaudible.]*
5071. **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.

5072. **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.
5073. **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.
5074. **Mr Lunn:** The school must be viable or it would not be there — or it would not be there shortly.
5075. **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.
5076. **Mr Lunn:** I got lost somewhere along the way. *[Laughter.]*
5077. **Mr Rogers:** Maybe, in the present circumstances —
5078. **Mr Lunn:** We are talking about the overlap between area plans?
5079. **Mr Rogers:** Yes.
5080. **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.
5081. **Mr Lunn:** Is there something in the area-planning process that allows for dealing with the unmet need for integrated schools?
5082. **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.
5083. **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?
5084. **Mr Lunn:** You got that right.
5085. **The Chairperson:** That can be reflected. We are still awaiting an amendment to:
“9 ... (b) ... the definition of ‘Catholic maintained school’”.
5086. **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.
5087. **The Chairperson:** So, that would be the sum and substance of the amendment.
5088. **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.
5089. **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.”
5090. 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.
5091. **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."*
5092. That is one amendment that we would welcome. Is the Committee agreed to that amendment?
5093. **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.
5094. **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 transferor governors of controlled secondary schools?
- Members indicated assent.*
5095. **The Committee Clerk:** What about the third amendment?
5096. **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.
5097. That has been an error in article 49 of the 1986 Order.
5098. **Mr Stewart:** It is an error in the instructions for the drafting of this Bill.
5099. **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)**
5100. **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.
5101. Is the Committee content with schedule 8, as drafted, subject to consequential amendments?
- Members indicated assent.*
5102. **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.
5103. **I refer members to page 132 of the scrutiny table.**
5104. **The Committee Clerk:** Members have already agreed suggested amendment h, which was from the TRC. Does the Committee support any of the others?
5105. **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?
5106. **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.
5107. **Mr Lunn:** Are you saying that the Audit Office already has the power to scrutinise ESA?
5108. **Mr Stewart:** Absolutely.
5109. **Mr Lunn:** In the same way that it scrutinises the present system?
5110. **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.
5111. **Mr Lunn:** Yes. If it is already there, we do not need to worry about it.
5112. **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."*
5113. 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.
5114. **The Chairperson:** We discussed that.
5115. **Mrs Dobson:** We did but the issue is back.
5116. **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.
5117. **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.
5118. **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?
5119. **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?
5120. **Mr Stewart:** I will have to check that, Michelle. I am not sure of the definition.
5121. **Miss M McIlveen:** Anything outside Belfast or Londonderry is regarded as rural, so it means that we would be putting protection on other schools.
5122. **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.
5123. **Miss M McIlveen:** Can I get clarification from the Department on that and how that correlates with our practice?
5124. **Mr Stewart:** Yes, we can certainly find out the definition of "rural".
5125. **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.
5126. **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.

5127. **Mr Hazzard:** Just so that you know when you are going through them.

5128. **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.

5129. **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.”

5130. The departmental response states:

“This is outside the scope of the Bill.”

5131. 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.

5132. **The Committee Clerk:** I think that the member is clearly indicating his support for an amendment along those lines.

5133. **Mr Lunn:** Yes.

5134. **The Chairperson:** Any other comments?

5135. **Mr Kinahan:** Elements of proposed amendment p — *[Inaudible due to mobile phone interference.]*
ParentsOutloud — *[Inaudible due to mobile phone interference.]*

5136. **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?

5137. **Mr Kinahan:** That is what — *[Inaudible due to mobile phone interference.]* — is certainly saying.

5138. **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.

5139. Is the Committee content with the long title of the Education Bill as drafted?

Members indicated assent.



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