

COMPARABLE ISSUES FROM LIBRARY, HEALTH AND EDUCATION BILLS

SUMMARY

This briefing paper looks at issues in the Education Bill where parallels can be drawn with the Committee stages of the Libraries Bill¹ and the Health and Social Care (Reform) Bill². The issues identified and illustrated in this paper are,

- Mechanisms put in place to deal with disputes between the bodies delivering the services;
- A lack of clarity that has been discussed by statutory committees scrutinising all three Bills;
- Transfer of staff;
- The representational role of service users;
- Powers of the ESA;
- The use of subordinate legislation procedures; and
- A conclusion drawing out general points in relation to the scrutiny of Bills.

INTRODUCTION

Education in Northern Ireland is unique in terms of the involvement of sectoral interests. Therefore it is not possible to make direct comparisons between the delivery of education to sectoral interest groups and the delivery of health and library services to the general population.

Therefore, this briefing paper does not attempt to make direct comparisons. Rather it examines the Committee Reports from the respective Committees' scrutiny of the Libraries Bill³, the Health and Social Care (Reform) Bill⁴ ("HSC (Reform) Bill") and highlights issues that may be of interest to the Education Committee in its scrutiny of the Education Bill⁵.

The Education Bill, Libraries Bill (now Libraries Act 2008) and the Health and Social Care (Reform) Bill (now Health and Social Care (Reform) Act (Northern Ireland))

¹ Libraries Bill CAL Committee Report available on the Assembly website at:
http://www.niassembly.gov.uk/legislation/primary/2007/niabill5_07.htm

² Health and Social Care (Reform) Bill available on the Assembly website at:
http://www.niassembly.gov.uk/legislation/primary/2007/niabill21_07.pdf

³ Libraries Bill CAL Committee Report

⁴ Health and Social Care (Reform) Bill

⁵ Education Bill available on the Assembly website at:
http://www.niassembly.gov.uk/education/2007mandate/education_bill.htm

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2009) are all part of the Reform of Public Administration (RPA) to rationalise and streamline public services.

EDUCATION BILL

The Education Bill is intended to provide for the establishment of the Education and Skills Authority (ESA). ESA is intended to streamline the delivery of education services.

HEALTH AND SOCIAL CARE (REFORM) BILL

The rationale under RPA for the HSC (Reform) Bill was to *'put in place structures which are patient-led, patient centred and responsive to the needs of patients, clients and carers as well as being more effective and efficient (releasing resources for investment in front line health and social care).'*⁶

LIBRARIES BILL

The Libraries Bill proposed the establishment of a single Library Authority to streamline the delivery of the library service in Northern Ireland as part of RPA. The Policy context for the Library Authority is provided in 'Delivering Tomorrow's Libraries'⁷. This policy document sets out the framework for the delivery of library services and develops standards to measure the performance of libraries in the future.

Table 1: Purpose of Education, libraries and Health Bills

Education Bill	<p>Dissolves -</p> <ul style="list-style-type: none"> • Education and Library Boards • CCEA • Staff Commission for the ELBs • Youth Council for Northern Ireland • CCMS 	<p>Establishes -</p> <p>Education and Skills Authority (ESA)</p>
Libraries Bill		<p>Establishes -</p> <p>Library Authority</p>
Health and Social Care (Reform) Bill	<p>Dissolves -</p> <ul style="list-style-type: none"> • Health and Social Services Boards • The Mental Health Commission • Central Services Agency • Health and Social 	<p>Establishes the following 'health and social care bodies' –</p> <ul style="list-style-type: none"> • Regional health and Social Care Board • Regional Agency for Public Health and Social Well-being • Regional Business

⁶ Explanatory Notes at:

http://www.opsi.gov.uk/legislation/northernireland/acts/acts2009/en/niaen_20090001_en.pdf

⁷ 'Delivering Tomorrow's Libraries' (2007) DCAL available at:

http://www.dcalni.gov.uk/final_delivering_tomorrow_s_libraries_document_-_july_2007_-_1mb_document_for_website.pdf

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	Service Councils	Services Organisation <ul style="list-style-type: none">• HSC trusts• Special agencies• Patient and Client Council• RQIA
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DISPUTE RESOLUTION

EDUCATION

The Education Minister's letter of 17 June 2009 to the Education Committee reiterates information given by the Department of Education (DE) in evidence to the Education Committee that Article 101 of the Education and Libraries (Northern Ireland) Order 1986⁸ provides the means for dispute resolution between education bodies.

Article 101 of the 1986 Education Order was amended by Article 158 of the Education Reform (Northern Ireland) Order 1989⁹ to give wider ranging powers to the DE to intervene in disputes.

Article 158 (amending Article 101) states,

Power of Department to give direction

158. For Article 101 of the principal Order there shall be substituted the following Article—

(4) If, on a complaint made to it by any person or body, the Department is satisfied that a relevant authority has acted or is proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any provision of the Education Orders, the Department shall give such directions under paragraph (1) as to the exercise of the power or the performance of the duty as appear to the Department to be expedient to remedy that complaint.

HEALTH

Clause 5 of the HSC (Reform) Bill 'requires the Department to prepare a framework document which sets out the main priorities, objectives, guidance and other matters for each health and social care body in connection with the carrying out of its functions. The Department must also keep the framework document under review and may, from time to time, revise it.'

In evidence to the Health Committee¹⁰ on 25 September 2008, a Health and Social Services Councils spokesperson expressed concerns about the separation of

⁸The Education and Libraries (Northern Ireland) Order available at:
http://www.uk-legislation.hmso.gov.uk/RevisedStatutes/Acts/nisi/1986/cnisi_19860594_en_1

⁹The Education Reform (Northern Ireland) Order 1989 available at:
http://www.opsi.gov.uk/si/si1989/UKsi_19892406_en_1.htm

¹⁰Report on the Health and Social Care (Reform) Bill (NIA21/07) available on the Assembly website at: http://www.niassembly.gov.uk/health/2007mandate/reports/report10_08_09r.htm

functions between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being (RAPHSW), arguing that the RAPHSW should be accountable to the Regional Board. The Health Minister addressed this concern with a *'commitment to the production of a framework document that makes abundantly clear the respective functions and interrelationship of the new health and social care organisations.'*

A paper from the Department of Health, Social Services and Public Safety (DHSSPS) will *'inform the proposed Framework Document provided for in the Bill.'*¹¹ It outlines the working relationship between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being (RAPHSW).

Its publication followed a public consultation that identified concerns about perceived risks in the relationship between the two bodies. The paper sets out their roles, including their core functions and joint commissioning arrangements. These will involve funding flows between both organisations and the DHSSPS. Both organisations will be fully accountable for a joint three year rolling commissioning plan, although ultimate responsibility will rest with the RHSCB. The paper states that, *'Any failure to agree such a Plan, which cannot be resolved by the two organisations, would be referred to the Department, and ultimately the Minister.'*¹²

Clause 5 of the Bill also required the DHSSPS to consult with each body in respect of its functions and stated that it may consult with any other bodies that it considered appropriate. The DHSSPS Committee was concerned that the provision in subsection (5)(b) that the DHSSPS *"may consult any other bodies or persons the Department considers appropriate"* was too weak and proposed that *'may consult'* should be replaced with *'will consult'*. Following consideration the DHSSPS accepted the proposal and agreed to amend the clause.

¹¹ 'Working relationship between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being' (January 2009) DHSSPS available at: <http://www.dhsspsni.gov.uk/mipb-05-09.pdf>

¹² In the summary of 'Working relationship between the Regional Health and Social Care Board (RHSCB) and the Regional Agency for Public Health and Social Well-being' (January 2009) DHSSPS.

REPRESENTATIONAL ROLE

The table below sets out the legislation relating to the appointment of members of regional boards for the delivery of the education, library and health services following the RPA.

Table 2: Representational role of bodies created in the Education, Libraries and Health Bills

	Education	Libraries Act	Health Act
Revisionary powers of Departments	<p>The Education Bill includes provision to increase the number of members of the ESA board by order.</p> <p>Schedule 1. 2.-(1) ESA shall consist of-</p> <ul style="list-style-type: none"> (a) a Chair, and (b) not fewer than 7 or more than 11 other members, appointed by the Department. <p>Schedule 2(3) The Department may by order amend sub-paragraph (1)(b) by substituting for the numbers specified there such other numbers as may be</p>	<p>Schedule 2.-(1) The Authority shall consist of-</p> <ul style="list-style-type: none"> (a) a Chair, and (b) not more than 18 other members, appointed by the Department. <p>Schedule 2(3) The Department may by order subject to negative resolution amend sub-paragraph (1)(b) by substituting for the number specified there such other number as may be specified in the Order.</p> <p>Following public consultation which ended in April 2007, there had previously been changes to the text of the Bill to increase the maximum permitted size of the Library Authority Board in response to concerns about difficulties in achieving a quorum. The Bill proposed 7 – 14 members.</p>	<p>Schedule 1. 3.-(1) The Regional Board shall consist of –</p> <ul style="list-style-type: none"> (a) a Chair appointed by the Department; (b) a prescribed number of persons appointed by the Department; (c) the chief officer of the Regional Board; (d) such other officers of the Regional Board as may be prescribed; and (e) not more than a prescribed number of other officers of the Regional Board appointed by the Chair and the members specified in heads (b) and (c).

<p>Regulations for sub-regional committees / boards.</p>	<p>specified in the order. The Minister's letter to the Committee (17 June 2009) proposes Local Area Teams with responsibility for educational support services in an area and liaise with local councils on issues including area planning. It is proposed that there will be one Local Team for Belfast City Council area and 5 Local Teams each covering 2 new local council areas. ESA will establish 11 Local Committees to work with LATS in each council area. These will comprise "a number of elected representatives and members with local knowledge and expertise".</p>	<p>The Libraries Act 2008 does not provide for sub-regional bodies. The matter was discussed as part of the Committee's scrutiny of the Bill and the Department viewed it as an operational issue rather than coming within the scope of primary legislation.</p>	<p>Schedules 1-4 of the of the Health and Social Care (Reform) Act (Northern Ireland) 2009 establish respectively the,</p> <ul style="list-style-type: none"> • Regional Health and Social Care Board • Regional Agency for Public Health and Social Well-Being • Regional Business Services Organisation • Patient and Client Council.
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CAL Committee discussions relating to the size of the Library Authority and the appointment of its members highlighted similar concerns to those of the Education Committee. The original proposal in the Libraries Bill was for seven to fourteen members for the Library Authority. Membership of the Library Authority in the subsequent Libraries Act comprises a chair and not more than 18 members.

During the CAL Committee's scrutiny of the Libraries Bill witnesses in evidence raised concerns about the number of members originally proposed. These centred on the onerous workload that was envisaged for Authority members required to serve on sub-committees.

In evidence to the CAL Committee the DCAL official responded that¹³ "*... There is a general move towards having smaller boards that work more effectively and efficiently, so we are trying to reflect that. The text of the Bill also reflects advice from the Office of the Commissioner for Public Appointments (OCPA), which recommends having smaller boards*" She went on to say that DCAL was not anticipating that the number of sub-committees would be as many as were required for the ELBs; possibly only an audit and a finance sub-committee.

CAL Committee members were concerned that, as appointments to the Authority would be based on merit, it would be difficult to ensure the level of expertise required along with geographical representation and a membership that would be reflective of the community.

Members voiced concerns about the level of geographical representation¹⁴. It was argued that in the past the fact that the constitution of the ELBs did not require board members to reflect the geographical areas they served had led to disparities. A DCAL official said that much would depend on the RPA and the community-planning responsibilities of the new councils. In the case of the Library Authority, DCAL were expecting it to be named in local government legislation as a body that would be involved in the local councils' community planning responsibilities.

In relation to the membership of the Library Authority reflecting the community of Northern Ireland, it was suggested by the CAL Committee that this could be a requirement included in the Libraries Act, as is the case for members of the Equality Commission and Human Rights Commission. The DCAL official during the evidence session agreed that DCAL would consider this¹⁵. It was agreed by the CAL Committee to write to the Minister "*requesting that he consider amending Schedule 1(2) of the Bill to specify that members of the Library Authority are representative of the community in Northern Ireland.*" However, this was not included in the Libraries Act¹⁶.

CLARITY

Clarity was lacking during the scrutiny of the Library and Health Bills regarding regional representation. Although acknowledging that the aim of the RPA was to streamline and centralise services, concern was expressed during scrutiny of both

¹³ Libraries Bill CAL Committee Report (paragraphs 829 and 830 of evidence, 4 October 2007).

¹⁴ Libraries Bill CAL Committee Report (Evidence sessions 4 October & 11 October 2007).

¹⁵ Libraries Bill CAL Committee Report (paragraph 1024).

¹⁶ Libraries Act, Schedule 1, sub-section 2.

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Bills about the lack of clarity surrounding local representation. This issue was addressed in part by the inclusion of elected representatives on central boards and regional committees.

The same concerns have been expressed by members of the Education Committee. It is claimed by the DE that, as yet unwritten, policy documents and a second Education Bill will provide clarity. However, the second Education Bill and policy documents are as yet unseen.

Lack of clarity was also identified in the Libraries Bill relating to sub-regional structures. Witnesses had expressed concerns about the lack of a sub-regional structure in the Bill. DCAL had stated that it saw this as an operational matter, which would therefore not be included in the legislation¹⁷. The Chief Executive designate of the ESA had provided the Committee with the operational structure of the Library Authority, but the CAL Committee felt that the operational structure at sub-regional level was also important to the scrutiny stage of the Bill. The CAL Committee suggested that contact with local authorities should be written into legislation, which DCAL agreed to consider. However, it was not included in the subsequent Libraries Act.

In discussing whether measures should be in primary legislation, a policy document or regulations. In relation to the current policy framework¹⁸ for the Library Service a DCAL official pointed out that the CAL Minister and DCAL would be expected to bring proposals for any revised policy framework to the Committee for consideration. The Committee would also be able to call the chairperson of the proposed Library Authority to account.

The then CAL Minister urged caution when considering asking for a measure to be included in primary legislation. He argued that,

I ask the Committee to be cautious about what they are asking for, in that instance. If the Committee want to put the process into a legislative framework, it will bind the flexibility of the process. We have a system whereby, if changes were to be introduced, the natural thing — and the way in which the Assembly operates — is that those changes are reported to the relevant Committee by the relevant Minister. We engage in discussions such as those and try to reach a common sense approach, working with each other. If the process is put into legislation, the Committee will have to bid to enter those processes. ...the Committee may want to see changes being implemented quickly. However, if the Committee has to bid to get into the legislative process for fairly minor changes, then real difficulties will be created in the flexibility of the process that we have¹⁹.

¹⁷ Libraries Bill CAL Committee Report (paragraph 1100 of evidence, 11 October 2007).

¹⁸ 'Delivering Tomorrow's Libraries' (July 2007).

¹⁹ Libraries Bill CAL Committee Report (paragraphs 1310 and 1311).

HEALTH BILL

It was noted in the Health Bill Research Paper²⁰ in relation to local Commissioning Groups (LCG) that,

The HSC (Reform) Bill lacks detail in relation to the composition of the membership of the LCGs²¹ including the number of representatives from the health professions or the number of publicly elected figures. Consideration may therefore be given to the inclusion of legislative provision to clearly state the number of representatives from the health professions, elected local representatives and other groups as outlined in the DHSSP's proposals.

Such legislation was not included in the subsequent HSC (Reform) Act. Section 9(6) allows for Regulations to be made for the provision of membership to LCGs and make further provision as the DHSSPS considers appropriate following consultation with the Regional Board.

TRANSFER OF STAFF

The legislation for the proposed transfer of staff is the same in all three Bills and contained in the Libraries and HSC (Reform) Acts.

During the scrutiny of the Libraries Bill the Northern Ireland Public Service Alliance (NIPSA) raised the issue of the transfer of employed staff. NIPSA reported that they had obtained legal opinion that suggested that staff transfer may be open to legal challenge if implemented as proposed in the Libraries Bill.

In giving evidence to the CAL Committee, an official from the Departmental Solicitors Office (DSO) stated,

The issues are complex, and my instructions throughout, when considering the Bill and throughout the work that I have done for other Departments on RPA, have been to ensure that the interests of staff are fully protected in line with Cabinet Office guidance and TUPE protection²².

The CAL Committee Report on the Libraries Bill sums up the discussions in relation to staff transfer with DCAL officials and the DSO as follows,

In relation to Schedule 2 of the Bill, NIPSA had proposed a number of amendments to the Committee in both its written and oral evidence. The Committee discussed the issues involved with a representative from the Departmental Solicitors Office at

²⁰NIA Research Paper 91/08, 'Health and Social Care (Reform) Bill' by Neil Foster is available on Assist at;
<http://assist.assemblyni.gov.uk/services/rsrchlib/research/reports/dept/hssps/2008/foster9108.pdf>

²¹ Local Commissioning Groups.

²² Libraries Bill CAL Committee Report (paragraph 819).

its meetings of 4 October and 6 December 2007. The Committee then wrote to the Minister seeking confirmation that he was content with the legal advice he had received regarding Schedule 2 and that the drafting of Schedule 2 reflected the advice he had received. The Minister gave that assurance in a letter dated 20 December 2007 – see Appendix 4. The Committee therefore concluded that it was content with Schedule 2 as drafted²³.

Schedule 2 of the Libraries Act and Schedule 5 (2) of the HSC (Reform) Act apply the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to the transfer of employed staff. The same is proposed in the Education Bill.

REPRESENTATIONAL ROLE OF SERVICE USERS

Proposals in the HSC (Reform) Bill illustrate the representational powers that can be afforded to service users. Proposals for a Patient Client Council (PCC) to replace the Health and Social Care Councils were welcomed by the Health and Social Care Councils.

The HSC (Reform) Bill proposed to replace the Health and Social Care Councils with a new single regional body, the PCC. The following functions of the PCC in clause 17 of the Bill are;

- (a) representing the interests of the public;
- (b) promoting involvement of the public;
- (c) providing assistance (by way of representation or otherwise) to individuals making or intending to make a complaint relating to health and social care for which a body to which this section applies is responsible;
- (d) promoting the provision by bodies to which this section applies of advice and information to the public about the design, commissioning and delivery of health and social care;
- (e) such other functions as may be prescribed.

Schedule 4 of the Bill provides for the DHSSPS to appoint a Chair. Through regulations the DHSSPS may also decide on the tenure of the Chair, specify the number of other members to be appointed along with any limitations to their number and any conditions that will be applied to eligibility for membership.²⁴

Section 18 of the Bill places a duty on health and social care bodies to co-operate with the PCC. It specifies that a body must consult with the PCC where they think appropriate with regard to the functions of the PCC; furnish it with information and 'have regard' to advice given by the PCC.

During the scrutiny of the Bill, the Health Committee expressed concern about the wording of Clause 18(6) '*a body to which this section applies shall have regard to any views expressed by the Patient and Client Council*'. The Health Committee was concerned that while a body may 'have regard' to the views of the PCC, they may not

²³ Libraries Bill CAL Committee Report.

²⁴ Health and Social Care (Reform) Act (Northern Ireland) 2009; Schedule 4.

necessarily act upon them. The DHSSPS agreed to amend section (6) to *'have due regard to'*.

Clause 20 of the Bill required health and social care bodies to show in their consultation schemes how they would consult with the PCC and recipients of health and social care services. Again the Health Committee was concerned that *'having regard to comments'* may not be strong enough and the Department agreed to amend section (6) to read *'have due regard to'*.

Under the HSC (Reform) Act, social care organisations are required to produce consultation and engagement strategies for the delivery of their services. The PCC is provided with additional power as the DHSSPS will only approve these strategies following consultation with the PCC.

The PCC is now established. Its website²⁵ states that its overarching objective is to *'provide a powerful, independent voice for patients, clients, carers, and communities on health and social care issues'*.

There was no reference in the HSC (Reform) Bill or subsequent Act about local offices or local councils of members. However, the PCC as established has a Chair and 16 members. It will have five regional local offices in the geographical areas covered by the five integrated Health and Social Services Trusts and Local Commissioning Groups²⁶.

POWERS OF THE ESA

Powers are proposed in the Education Bill to allow the ESA to,

- enter into agreements;
- acquire or dispose of property;
- form bodies corporate;
- carry out or commission research; and
- co-operate with or provide advice to other statutory bodies.

The same powers are conferred on the Library Authority in the Libraries Act (Northern Ireland) 2008. Under Section 3(2) of the Act, 'Ancillary powers of Authority' in particular the Authority may-

- (a) enter into agreements;
- (b) subject to section 5, acquire or dispose of property²⁷;
- (c) borrow money;
- (d) subject to the approval of the Department, form bodies corporate or acquire or dispose of interests in bodies corporate;
- (e) accept gifts;
- (f) invest money;
- (g) carry out, or commission or assist in the carrying out of, research;

²⁵ The Patient Client Council website is available at:
<http://www.patientclientcouncil.hscni.net/index.html>

²⁶ Information from Patient Client Council website (July 2009).

²⁷ Section 5 referred to is 'with the approval of the Department'.

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

SUBORDINATE LEGISLATION

The four main Assembly procedures in relation to subordinate legislation are²⁸;

- **Negative Resolution** Statutory rules made under negative resolution procedures have the effect of law as soon as the 'comes into operation' date is reached. Such statutory rules can be annulled by the Assembly within the statutory period, 30 calendar days or 10 sitting days (whichever is longer). For it to be annulled a Member of a committee must table a motion known as a prayer of annulment in the Business Office for debate in the Assembly and the Assembly must vote in favour.
- **Affirmative resolution** – A statutory rule subject to affirmative procedure is made, printed and laid before the Assembly. It shall not come into operation unless affirmed by the Assembly. Usually the Minister responsible for the rule, although it could be any Minister, will table a motion in the Business Office proposing that the rule be affirmed by the Assembly. This is the most stringent form of Assembly control.
- **Confirmatory resolution** – A statutory rule which is subject to confirmatory procedure is printed, made and laid before the Assembly. It ceases to have effect unless approved by a resolution (a motion) of the Assembly within a specified period provided for in the parent (primary) legislation (normally six months). The Minister will table a motion in the Business Office proposing that the rule be confirmed by the Assembly.
- **Draft Statutory rules** – rules which are required by the primary legislation to be laid in the Assembly in draft for a specified period and once approved by the resolution of the Assembly do not require to be laid before the Assembly again.

EDUCATION BILL

In relation to the Education Bill the DE provided the Education Committee with a briefing paper outlining the range of enabling powers to make subordinate legislation. These are,

- Regulations – substantive law made by the Department to regulate or govern the exercise of functions on an ongoing basis;
- Orders – made by the Department to exercise executive power or make decisions in particular instances; and
- Bye-laws – made by the ESA to govern a range of local matters.

²⁸ From 'Guidance on Handling Subordinate Legislation (Statutory Rules) for Chairpersons and Members of Statutory Committees'.

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Clause 51 of the Bill sets out the arrangements for the Assembly to control subordinate legislation. All regulations and most orders made under the proposed Act will be subject to the negative resolution control procedure. Modifying orders would be subject to the affirmative resolution procedure because they can be used to make or modify primary legislation and should therefore be subject to the strongest means of Assembly control²⁹.

HEALTH BILL

In relation to the HSC (Reform) Bill, the Health Committee queried whether the subordinate legislation relating to the new Regional Agency and the Regional Business Support Organisation should be subject to affirmative or negative resolution.

The DHSSPS advised that,

Subsection (1) of the Clause provides that orders altering the functions of the proposed new Regional Agency (13(5)) and Regional Business Support Organisation (15(6)) and orders which include supplementary, incidental or consequential provisions to be used for expediency to give full effect to the Bill (30(1)) must use the affirmative resolution procedures. This is because it was considered that since such orders are akin to primary legislation and, therefore, more important and more likely to merit discussion they should be formally approved by the Assembly. The regulations and other orders which may be made principally relate to the day to day organisation of the various organisations and, therefore, considered more appropriate to the negative resolution procedure³⁰.

LIBRARIES BILL

In discussing the number of members of the Board of the Library Authority³¹ Members of the CAL Committee were concerned that, by stipulating a range with regard to board members for the Library Authority, a DCAL Minister may in future be able to vary the number of members without any need to consult the Committee.

The Principal Clerk of Bills suggested that one possible way to introduce flexibility would be to stipulate a number for board members, but provide the Minister with the power to make regulations. A statutory rule to amend the number would then have to be approved by the Assembly.

It was explained that to use an order subject to negative resolution would mean that there must be a vote in the Assembly to refuse it and that passing of an amendment would therefore remain within the power of the Assembly³². An amendment to the Bill was proposed by the CAL Committee and the subsequent Libraries Act (Northern

²⁹ Taken from a briefing paper provided to the Education Committee by DE.

³⁰ From 'Clause by clause consideration of the Bill' Committee for Health, Social Services and Public Safety Report.

³¹ Evidence session of the 6 December 2007 on the Libraries Bill available on Hansard.

³² As above.

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Ireland) 2008 stipulates that the board of the Library Authority shall consist of a chair and not more than 18 members. The Department is able to amend the number of members by order subject to negative resolution.

Section 29 of the HSC (Reform) Act, sub-section (1) states that '*No order shall be made under section 13(5), 15(6) or 30(1) unless a draft order has been laid before, and approved by resolution of, the Assembly*'. These sections refer to altering the functions of the Regional Agency, amending the support services required to be carried out by HSC bodies or making supplementary, incidental or consequential provisions to the Act.

The following regulations are subject to negative resolution in the HSC (Reform) and Libraries Acts,

- Section 29(2) of the HSC (Reform) Act states that '*Regulations under this Act and orders under section 24(4) or 26(3) are subject to negative resolution*'. These refer to orders the Department may make with regard to sub-sections of the Act not applying to any specified functions.
- The Libraries Act (section 8) applies negative resolution to orders DCAL may apply making the function of making grants exercisable by the Authority rather than DCAL.

CONCLUSION

A common thread throughout the scrutiny of the three Bills has been the Committees' respective concerns about the lack of clarity they have been given by the Departments. Concerns relate to the details that will be included in the various policies and frameworks that will implement the legislation. The saying that 'the devil is in the detail' has been apparent in discussions with Department officials in the Committees' scrutiny of all three Bills.

Members may wish to give consideration to the significance of Statutory Rules and their importance to Committees and the Assembly in having a say over Departments' implementation of legislation.

Members may wish to consider whether they feel that the mechanisms are adequate to allow Members time to consider if the detail in the policies for new bodies reflects the wishes of the Committee.

Another issue highlighted in the HSC (Reform) Bill Research Paper³³ is pertinent. It addresses the issue of the timing between a public consultation ending and the publication of draft legislation. The research paper states,

A concern expressed by the organisation Children in Northern Ireland (CiNI) relates to how the responses received during the DHSSP's consultation process are used by them to inform the draft legislation. According to CiNI, their concerns have 'been considerably heightened by confirmation that it is not the Department's intention to consult on the draft reform legislation

³³ NIA Research Paper 91/08, 'Health and Social Care (Reform) Bill' by Neil Foster.
Providing research and information services to the Northern Ireland Assembly

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which will be laid before the Assembly³⁴. The response raises an important issue regarding the timing of the DHSSPS's consultation process and the publication of the Health and Social Care (Reform) Bill. With the consultation exercise ending in May 2008 and the bill published several weeks later in mid June 2008 it supports the concern expressed by CiNI regarding the extent to which the DHSSPS took cognisance of the responses in the drafting of the HSC (Reform) Bill.

In general, Members may wish to consider whether the views expressed by interest groups and key players receive sufficient consideration by Departments before drafting a Bill, as it is the Bill as drafted that the Committee will be asked to scrutinise.

In relation to the Education Bill, while stakeholders may have been given sufficient time for consultation, nonetheless, there were 18 policy papers in all for stakeholders to analyse, assimilate and comment on.

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³⁴ Children in Northern Ireland (CiNI) Consultation Response.