Northern Ireland
Assembly

COMMITTEE FOR EDUCATION

OFFICIAL REPORT

(Hansard)

Education Bill

10 September 2009

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Mervyn Storey (Chairperson)
Mrs Mary Bradley
Mr Trevor Lunn
Mr John McCallister
Mr Basil McCrea
Miss Michelle McIlveen
Mr John O'Dowd
Mrs Michelle O'Neill

Witnesses:

Mr Chris Stewart) Department of Education
Ms Eve Stewart)

The Chairperson (Mr Storey):

We now move to the clause-by-clause scrutiny of the Bill. If we work hard, we can get this concluded by 11.00 am. That is the challenge, and the clock starts now. I thank Chris Stewart and Eve Stewart for making the effort to be here this morning.

In scrutinising clause 24, which deals with the duty of the education and skills authority (ESA) to conduct examinations and assessments, it will be helpful for members to refer to their folders, which include the Committee's draft report on the Education Bill. We are at paragraph 156 of the

report. Members may also wish to take a moment to consider the stakeholders' comments on clause 24 and the Minister's letter dated 17 June.

In respect of clause 24, the Department for Employment and Learning (DEL) has requested that the Department of Education (DE) amend the provisions to extend the ESA's role to cover a range of non-regulatory functions that relate to vocational qualifications, including advising DEL and supporting organisations that are involved in developing vocational qualifications. Has the specific wording for that amendment been agreed yet?

Mr Chris Stewart (Department of Education):
Yes; I was under the impression that we had provided the Committee with the text of the DEL amendments.

The Chairperson:
Are they included in the folder? I did not see clause 24 mentioned in the amendments that were given to the Committee.

Mr C Stewart:
A colleague has just confirmed that we have provided the Committee with the text of the proposed DEL amendments.

The Chairperson:
Will members check if they have that?

The Committee Clerk:
I wish to clarify that on 4 September we received proposed amendments from the Department for clause 26 but not for clause 24.

Mr C Stewart:
There is a separate list of amendments.

The Chairperson:
The other list that we have goes from clauses 1 to 23 only.

The Committee Clerk:

The other list has some proposed amendments to clauses 1 to 23; however, the DEL amendments do not come to mind.

The Chairperson:

Can we get that clarified immediately? There were also comments on clause 24 from the Association of Northern Ireland Education and Library Boards (ANIELB) and the South Eastern Education and Library Board (SEELB).

Mr C Stewart:

I apologise for any confusion; we might have made an error. We thought that we had sent the text of the DEL amendments to the Committee. If we have not, we will certainly forward that to the Committee today, because the detailed wording is available.

The Chairperson:

The Association of Northern Ireland Education and Library Boards raised the issue of a perceived risk or potential conflict of interest that would damage public confidence in qualifications. Has that concern been addressed?

Mr C Stewart:

We understand the point that the association has made, but it remains the view of the Department and the Minister that there is no conflict of interest for the association to fear. The issue of the standards of examinations or qualifications for which the ESA will be responsible and for which the Council for the Curriculum, Examinations and Assessment (CCEA) is currently responsible is an important one. Close working relationships exist among the accreditation and regulation bodies throughout all the jurisdictions in the British Isles, and that will continue. Indeed, in the list of proposed departmental amendments, members will see that we propose to take a specific joint working power to further enhance that.

The underlying point is that the all regulatory authorities recognise the importance of the portability of examinations. The standards of examinations and qualifications have to be internationally recognised, otherwise they would be devalued. That will be the main driving force behind the ESA's approach to that function. I think that the association has grossly overstated the issue of a potential conflict of interest.

Mr O'Dowd:

Did the association have any evidence of that actually happening?

The Chairperson:

In paragraph 158 on page 53 of the draft Committee report, the Association of Northern Ireland Education and Library Boards states:

"The inclusion of CCEA and its role within ESA gives rise to possible concern around the integrity of statistics and standards. The Bill needs to clarify and separate these functions to give the public confidence".

The association is saying, therefore, that public confidence will be eroded. It does not cite any empirical evidence for that. However, did the association make a reference at some stage to an organisation in England and Wales that it used as a comparison? Do members have any further comments on that?

Mr Lunn:

What way does that change the existing situation?

Mr C Stewart:

It does not change it particularly. That block of clauses effectively transfers the current functions of CCEA to the ESA. If there is any area in which there is a potential conflict of interest — and I see little such potential — it is the fact that the ESA will also be responsible for providing curriculum support and giving professional advice and training to schools. The Department does not regard that as involving any degree of conflict of interest. If the issue is, as the Chairperson said, one of statistics, I find the association's comments even more bewildering. Official statistics published by the Department are audited and must comply with standards set by the Office for National Statistics.

Mr Lunn:

It looks like a non-event to me; there is no basis for the association's concerns.

Mr C Stewart:

I entirely agree with the member's comments.

The Chairperson:

Having considered that clause, are members content with it as drafted at this point?

Members indicated assent.

The Chairperson:

Clause 25 allows the ESA to carry out other functions in relation to the curriculum, examinations and assessments: for example, the production of teaching materials and the publication of guidance regarding the curriculum. The ESA also may charge other examining bodies or authorities for carrying out functions on its behalf. I refer members to a concern raised by the SEELB in paragraph 163 of the draft report. It states:

"by requiring ESA to produce materials for use in connection with the Curriculum for 2 year olds, there is a danger that this might formalize their learning experiences. The benefits of formalizing the curriculum for children of such a young age are questionable and come at a time when many other countries are introducing children to formal education at a much later age."

Others will have a different view on that. However, I thought that the SEELB was expressing a different point of view. Do members have any comments? Chris?

Mr C Stewart:

It is an interesting comment by the SEELB on the Minister's policy. Perhaps it is an opportune time to remind the SEELB that Ministers make the policy and that it is the job of the education and library boards to carry it out.

The Chairperson:

OK. That is what will appear in Hansard. I am glad that you said that and not me.

Having considered the clause, are members content with it as drafted?

Members indicated assent.

The Chairperson:

Clause 26 concerns the discharge by ESA of its functions under clauses 24 and 25. In carrying out its function in relation to the curriculum, examination and assessment, the ESA is placed under a duty to have regard to:

"the requirements of industry, commerce and the professions regarding education."

It is also placed under a duty to have regard to the requirement of people with special educational needs and learning difficulties. I refer members to paragraph 166 of the draft Committee report and to the stakeholders' comments on the clause. In response to concerns raised by CnaG in paragraph 167 of the draft report, the Minister's letter of 17 June indicated that the Department was considering making an amendment to clause 26 to ensure that the curriculum support and similar services will be sensitive to the needs of Irish-medium education. The letter also states that the Minister is considering an amendment to clause 2 of the Bill, which concerns the functions and general duties of the ESA, to include a duty on the ESA to encourage, facilitate and develop Irish-medium education.

We have supplied members with copies of the proposed amendments this morning. However, as we said yesterday, we will come back to those amendments. The Department has also proposed to delete clause 26(2)(b), indicating that the DEL amendment is no longer required. Can you clarify why that is necessary?

Mr C Stewart:

Our DEL colleagues have simply advised that that provision is no longer required.

The Chairperson:

The Department's proposed amendment to clause 26(1) would mean that a new third sub-paragraph would be included at the end:

"(iii) the requirements of those attending Irish speaking schools (within the meaning of Article 3(2) of the Education (Northern Ireland) Order 2006) who are taught in Irish".

Are there any comments from Members?

Mr Lunn:

Where is that amendment going to be inserted?

The Chairperson:

Clause 26(2)(b) will be removed, and at the end of clause 26(1) a third subparagraph will be added, which will simply read:

"(iii) the requirements of those attending Irish speaking schools (within the meaning of Article 3(2) of the Education (Northern Ireland) Order 2006) who are taught in Irish".

Do members have any other comments?

Mr O'Dowd:

Will we be returning to that issue?

Mrs M Bradley:

I am sure that Dominic Bradley will want to comment on it as well.

The Chairperson:

Yes; I am sure that he probably will. Indeed, I also express a difficulty as a member rather than as the Chairperson. I would not approve the amendment at this stage.

Mr B McCrea:

Can you clarify the process that we are going through? We are having a run-through to ascertain whether members have any general comments that the Department can consider. Are we then going to come back and look at things in more detail?

The Chairperson:

Yes; we will have to consider each individual amendment.

The Committee Clerk:

At the end of the day, the Committee has to decide whether the clause should stand as read in the Bill or whether the clause should be amended. That consideration includes looking at the Bill plus the now 34 departmental amendments and, indeed, maybe a few more that are still to be proposed. The Committee will have to decide whether it is content with the Bill plus the departmental amendments or whether it wants to amend any of the clauses. We will look at the schedules in the same way. Today's process is one of consideration so that we can tease out any final questions that can be put to the Department today or put formally to the Department later, as was done yesterday. In the next week, and certainly in the following week, the Committee will have to make a final decision on each clause.

The Chairperson:

Are members content with the clause as it stands, or do they support the proposed amendment? I am certainly not content with the amendment.

Mr O'Dowd:

Having listened to the Committee Clerk's advice, we must take a view on the amendment today. We support amending the clause as proposed by the Department.

Mr B McCrea:

Having just received the proposed amendment, we will need to consider our position, but our overriding concern is that a particular sector must not be treated differently to any other sector. We will have to look at it and see what we come up with.

Mr O'Dowd:

If members need more time to consider the amendment, I am happy to withdraw my proposal until they have had a chance to look at it. We can revisit it.

Mrs M Bradley:

That allows Dominic to make his comments.

The Chairperson:

I am happy to accept that.

We move to clause 27. Some members have perhaps not brought their black folders, which include a copy of all the amendments that were sent to us by the Department.

The Committee Clerk:

The Department provided us with a useful table last Friday. It shows the rationale for the amendments and the terms of the amendments.

Mr B McCrea:

Which black folder?

The Chairperson:

It is in yesterday's folder, and it is included under the heading 'Matters arising'. Members, it gets difficult with all these pieces of paper; we will try to keep it as simple as possible.

Clause 27 is entitled 'Functions of the Department in relation to accreditation of certain

external qualifications'. It requires the Department to develop and publish accreditation criteria for external qualifications and accredit those qualifications where they meet those criteria. The Department may obtain advice from the ESA or any UK body exercising accreditation functions and shall seek to ensure that standards of qualifications accredited by it are recognised as equivalent to standards of qualifications accredited by other UK bodies.

We have no stakeholder comments on clause 27. Paragraph 172 of the draft report relates to clause 27, and it contains the rationale for the Department's amendment to the clause to provide for a joint working power. At present, CCEA works jointly with regulators in England and Wales on a number of regulatory issues. However, when CCEA is abolished and the Department assumes its responsibilities, the Department's legal advice indicates that a specific joint working power for the Department will be necessary.

The wording of the Department's proposed amendment was received by the Committee on 4 September 2009. It would insert new subsections (5)(a) and (5)(b) at clause 27. It is proposed that clause 27(5)(a) and 27(5)(b) will read:

"(5A) The Department may —

(a) co-operate or work jointly with another body exercising functions in relation to the accreditation of qualifications (whether in the United Kingdom or elsewhere);

(b) provide information relating to the accreditation of qualifications to such a body.

(5B) Nothing in subsection (5A) —

(a) affects any power that exists apart from that subsection; or

(b) authorises the disclosure of information in contravention of any provision made by or under any statutory provision which prevents disclosure of the information."

That is ensuring that the ESA has the power that currently exists within CCEA.

Mr Stewart:

That is correct. It underlines the point that was made earlier about a potential conflict of interest. It is worth drawing members' attention to the fact that it is the Department that accredits the qualifications. CCEA does the heavy lifting and provides us with the advice, but the formal function is with the Department.

Mr B McCrea:

Clause 27(5) as it stands in the Bill contains the wording:

"exercising similar functions elsewhere in the United Kingdom".

The amendment proposes that that be changed to "the United Kingdom or elsewhere". That is the substance of the change that has been brought in.

Mr Stewart:

You are correct in that the addition of the new subsection will not change what happens on the ground; it is merely to put absolutely beyond doubt its legality. You are right; the clause has been drafted in a way to ensure that that joint working is possible with the corresponding authorities across all the jurisdictions in the United Kingdom and outside it.

Mr B McCrea:

Does clause 28 deal with equivalent qualifications or has that more to do with DEL's role?

Mr C Stewart:

Both Departments will have similar functions, and in exercising their functions, they rely on the advice that they receive from CCEA at present and that they will receive from the ESA in due course — or, in DEL's case, from the Office of the Qualifications and Examinations Regulator, which is known as Ofqual.

Mr B McCrea:

There is an issue over equivalent qualifications from the South and from other European countries. Does the Department of Education intend to take the lead in introducing equivalent qualifications throughout the island of Ireland? That is certainly a cause of concern for us, and I am not sure whether I am for or against that.

Mr C Stewart:

I cannot answer that in detail, Basil. I shall have to consult colleagues on the curriculum side. If I were to answer that, I would be getting into areas of policy with which I am not familiar. The intention of the clause is to put beyond doubt the power of the ESA to work jointly with the equivalent bodies in the jurisdiction of the United Kingdom, the Republic of Ireland, and, indeed, beyond if necessary.

Mr B McCrea:

I note that that is what the clause is for, and we must reflect on how it is properly constructed.

Mr Lunn:

Chris has just answered the point that the clause is intended purely to allow the Department to work jointly with other authorities. If the intention is to standardise the quality — if that is the right word — of our qualifications with those from other parts of the world, whether that is the Republic or anywhere else, surely that is a good thing. That would be a move from consulting to working jointly in that area.

Mr C Stewart:

I may not have understood Basil's question correctly, but I think that he was drawing a distinction between ensuring comparability of standards between qualifications and moving to joint qualifications. I am not qualified to comment on joint qualifications.

Mr Lunn:

I do not see anything to indicate that joint qualifications will be introduced. It refers only to our qualifications and, as far as possible, standardising them so that those qualifications mean as much in the outside world as those in the Republic, the UK or Finland.

Mr C Stewart:

Neither the clause nor the amendment contains anything specific on joint qualifications. I think that Basil was asking whether the purpose of the clause was to facilitate such a policy change. I cannot comment on such a potential policy change; I simply do not work in that area.

Mr Lunn:

Are you being unduly suspicious, Basil?

Mr B McCrea:

I only asked the question.

The Chairperson:

Can we get clarification from the Department on that point?

Mr C Stewart:

Yes, certainly.

Mr O'Dowd:

It will be up to the relevant Government or Department to decide whether to accredit qualifications. We could not say to the Dublin Government, the Scottish Government, the Welsh Government or the French Government that they have to accept our qualifications; only they have the power to accept them. In case there are suspicious minds that see a conspiracy theory, the North/South Ministerial Council (NSMC) can also deal with joint qualifications. The clause is concerned with ensuring that the structures under which the Department of Education works are capable of being scrutinised by the Committee for Education and the Assembly.

The Chairperson:

In fairness, the concern is that the new organisation will meet Monday to Friday from 9 am to 5 pm all year, as opposed to the NSMC, which meets only once a quarter. The issue is over what may or may not go on, and I question why the new subsection is necessary. Clause 27(4) currently states:

"The Department may obtain advice on the exercise of its powers under this section from ESA or any body exercising functions in the United Kingdom in relation to the accreditation of qualifications."

Therefore, not much is being changed.

Mr C Stewart:

We do not propose a huge change to clause 27. The fact that I was cautious in my answer may have resulted in unnecessarily giving rise to concern on the part of some members. I can confirm that there is nothing in the review of public administration (RPA) policy that is intended to lead to any change in the qualifications that are awarded. The purpose of the clause is merely to put beyond doubt the legality of current practice, which is that the various bodies that are responsible for those functions in the various jurisdictions already work closely together, and that will continue.

The measure was not something that we thought was necessary, but our lawyers advised us to include it for belt and braces to put the matter entirely beyond doubt. I am not aware of any intended policy change behind the measure, but as the curriculum and examinations are not matters on which I work, I will double-check with my colleagues and get back to the Committee to confirm that.

Mr Lunn:

Although everything that Chris said was relevant, his most relevant comment concerned the solicitor's advice. We are not looking at an issue about which the Minister has a bee in her bonnet; we are looking at the solicitor's advice.

Mr C Stewart:

On this occasion, the bee was in the lawyer's bonnet.

Mr B McCrea:

All I did was ask a question.

Mr Lunn:

You see what happens.

Mr B McCrea:

I will not make that mistake again.

There is no reason why the Department should not look at positive engagement. As I said, I was not sure whether I was for or against the matter.

Mr Lunn:

Now you are convinced that you are in favour of it.

Mr B McCrea:

Like you, I am in a benign mood today, so all sorts of things could happen. The Committee will receive a response and discuss it, and I am happy with that.

Mr Lunn:

Although we are on only our third clause, we have already had two minor divisions along the lines of two political views that are represented in the Assembly. Sooner or later, we will have to come to a decision and exhibit a wee bit more trust and a little less suspicion. I wish that that would happen now, because the few arguments so far seem to me, who is sitting in the middle without a particular axe to grind, to have been superfluous.

The Chairperson:

I appreciate your comments, Trevor. However, we must ensure that all genuine concerns about the Bill are raised. If and when the Bill is passed, it will be too late to raise any concerns as it will be law. We are not dealing with a school report; we are dealing with something that will become law and which will have wide-ranging implications for the future governance of education in Northern Ireland for many years to come. I accept your point, but genuine concerns and issues must be allowed to be raised. Yes, we will have to make decisions on the Bill, and we have a few weeks in which to do that.

Mr Lunn:

I fully understand the differences of opinion on the bigger issues, but some of the disagreements have been mighty trivial. I long for the time when the Committee agrees on aspects of the Bill. I am still waiting.

The Chairperson:

Concerns have been raised and, having considered the clause and the proposed amendments to it, are members content? Can we ask the Department to show us the legal advice that it received?

Mr C Stewart:

The Department's lawyers would be reluctant to provide that information. We can give the Committee the thrust of the legal advice and the thinking behind it, but members will find that there is very little to it.

The Committee Clerk:

We received a very useful table last Friday, which details the terms of the departmental amendments. A copy of that document was sent to each Committee member, but I can get a copy for those members who do not have theirs with them.

Mr Lunn:

What colour of folder was it in?

Mr B McCrea:

The Committee staff will have to do a little bit to help the Chairperson and members with the paperwork, because no matter what folders I bring with me, they are always the wrong ones.

Fortunately, John McCallister brings another set of folders, so between us we nearly have all of the papers.

The Chairperson:

It is very difficult to manage all the papers; we have to find a logical way to work through them. It would be very useful for members to have the spreadsheet in front of them.

The Committee Clerk:

If members have the spreadsheet in front of them, the Chairperson will not have to spell out the terms of each amendment, which are quite detailed. I will make six copies of the spreadsheet. As soon as we received the spreadsheet on Friday, we sent copies of it to all members.

Mrs M Bradley:

Was it sent as a separate sheet?

The Chairperson:

No, it was not.

Mr B McCrea:

May I make a suggestion? Is there any chance that we could have it on a computer screen so that we could see the clause rather than the Chairperson having to read through everything? Is that too far advanced?

The Committee Clerk:

The Assembly is moving in that direction for the presentation of paperwork.

The Chairperson:

The other reason that it has to be read out is that it must be read into the record of Committee proceeding.

Mr B McCrea:

I have no problem with the Chairperson reading it; I know that it must be done. Nevertheless, when it is read I just say, "OK" because I have not found the relevant piece of paper. Either someone must put the piece of paper in front of me and say that that is what we are discussing so

that we can move fast, or it should be on a screen. It is only for reassurance so that members can get the point. People keep telling me that there is a really useful spreadsheet here, a really useful table there, and that in the black folder that I received yesterday there are other papers. It is difficult to keep up to speed.

Mr O'Dowd:

I wonder how they do it elsewhere.

Mr B McCrea:

They use computer screens to show information. Anyway, I will soldier on because I do not want to fall down.

The Chairperson:

The draft report gives a clause-by-clause explanation that can be used in conjunction with the Bill.

Mr B McCrea:

I have worked that one out.

Mr C Stewart:

Notwithstanding the logistical difficulties, Mr O'Dowd's drawing attention to the table is timely in relation to that point. Members will find that the wording in the table is very close to the wording of the legal advice that we received. It gives the gist of the legal advice.

Mr B McCrea:

Where is that table?

The Committee Clerk:

It is being photocopied. The table arrived at 5.00 pm on Friday after the folder had gone to members. It was e-mailed and put in members' pigeonholes on Friday. However, members will receive a copy now.

The Chairperson:

A technician has to look at one of the microphones so we may have to suspend.

Mr B McCrea:

Are you saying that my words of wisdom are not being recorded? What a complete waste of a morning.

The Chairperson:

It simply means that we will have to go back to the start again.

Mrs M Bradley:

Everything that Basil said has gone down the tube.

Mr B McCrea:

Absolutely, Mary. What a waste.

The Chairperson:

We can continue.

We move on to clause 28, "Approval of courses leading to external qualification", which ensures that grant-aided schools will only provide courses of study that result in a qualification that is approved by the Department. Likewise, the clause also ensures that institutions of further education will only provide courses of study that are approved by the Department for Employment and Learning. SEELB is concerned with clause 28 and stated that it appears to open up the possibility of post-primary schools offering approved post-16 courses without specific teaching approval in response to development proposals, as have been required since 2003.

Mr C Stewart:

No, that is not the case.

The Chairperson:

The answer to that is that it does not.

Mr B McCrea:

Is there nothing in the white folder about clause 28?

The Committee Clerk:

Not as yet. There were no comments, with the exception of SEELB. We will be dealing with that in due course in our draft report.

The Chairperson:

Do members have any comments?

Having considered clause 28, to which no amendments have been proposed, are members content with the clause as drafted?

Members indicated assent.

The Chairperson:

Clause 29, "Disciplinary powers of General Teaching Council", amends existing provision for disciplinary procedures in respect of teachers by the General Teaching Council in cases of unacceptable professional conduct or the conviction of registered teachers.

There are comments about this in the draft report at paragraphs 175 to 181.

The General Teaching Council for Northern Ireland said in its submission that it was content with the new provisions and that they are sufficiently robust to allow the council to fulfil its regulatory function.

Are there any comments?

Mr Lunn:

If I remember correctly, the General Teaching Council started off with major concerns about this, but it now seems to be satisfied; let us hope that everybody else will be as well.

The Chairperson:

Having considered this clause and any proposed amendments at today's meeting, are members content with clause 29 as drafted?

Members indicated assent.

The Chairperson:

We will consider clauses 30 to 33, which deal with schemes of management, their content and arrangements for their preparation, submission, approval and revision, as well as the reserve power of the ESA to make such schemes. There are similarities with the schemes of employment, which you may wish to highlight in light of the differences that we discussed yesterday in regard to the schemes of employment.

Clause 30 requires every grant-aided school to have in place a scheme of management that provides for the membership and procedures of the board of governors and for the management of that school. It is the duty of the board of governors to give effect to the scheme of management. The arrangements in clause 31 mirror those for the preparation and approval of employment schemes, with the submitting authority preparing a draft scheme for submission to the ESA for approval, taking into account the ESA's guidance, including model schemes.

Clause 32 reserves to the ESA a power to make a scheme of management for a school in the absence of agreement with the submitting authority. Clause 33 permits the submitting authority to prepare a revised scheme and gives the ESA a power to direct the submitting authority to revise its scheme. These clauses are referred to in paragraphs 182 to 190 of the draft report.

Wording for a departmental amendment to clause 31(7) was received by the Committee on 4 September 2009. It changes the meaning of "submitting authority" and replaces the present 31(7)(a) and 31(7)(b) with new wording so that, as with employment schemes, the submitting authority in relation to schemes of management is the trustees of a school, where a school has trustees. In the case of a controlled school, the submitting authority is the board of governors of the school; in a voluntary or grant-maintained integrated school, it is the trustees of the school or, if the trustees so determine, the board of governors of the school.

The Association of Northern Ireland Education and Library Boards comments that the existing schemes are no longer fit for purpose but that boards of governors are being encouraged to run with them. Chris, can you clarify that point? What is the situation regarding that?

Mr C Stewart:

With one or two exceptions where schools have declined to comply with the legislation, all schools have schemes of management. It is, perhaps, a sweeping statement to say that they are all no longer fit for purpose, although I am sure that that is the case for some schools. Most schools have schemes of management in place at present.

The requirement on the ESA will be to produce guidance and model schemes. It will, in due course, want to review the existing schemes of management for all schools to ensure that they are fit for purpose or that they are modernised and brought up to good practice if necessary. Unlike schemes of employment, schemes of management are, by and large, in place, and therefore it is possible to have a degree of continuity on 1 January 2010. It is not quite the same with schemes of employment.

The Chairperson:

One of the issues raised by the Western Education and Library Board was that the preparation of schemes of management would place a considerable burden on boards of governors. At one stage, it was said that model schemes were being worked up by the Department. Has any of that work been done?

Mr C Stewart:

That was in relation to schemes of employment. As yet, there is no development of model schemes of management, but that will need to be taken forward. I understand the concern articulated by the Western Board on behalf of boards of governors, and I will respond to it in two ways. First, when model schemes are available — of course we would involve all the interests across the sphere of education in the development of those schemes — it is perfectly possible for a school to adopt a model scheme without amendment. That would place no particular burden on any board of governors.

Stepping back from the issue, it is important to remind ourselves of the importance of schemes of management. There are 1,253 grant-aided schools, which spend £1·8 billion of public money, and educate 400,000 children. The provisions state that, in discharging those functions, there must be rules that must be adhered to. The Department believes that that is important. It will impose some workload on boards of governors, but the view of the Department is that it is inescapable.

The Chairperson:

Can you recall a case where a school included an element of a scheme of management that was not approved by the Department?

Mr C Stewart:

Not to my knowledge, but I would have to double-check with colleagues to give you an absolute assurance. By and large, the existing provisions have not called for much intervention on the part of the Department.

Mr B McCrea:

It will be perceived as an attempt to control more independently minded boards of governors.

Mr C Stewart:

It is difficult to counter that perception if there are those who are determined to adopt it. However, the crux of the provisions is to place an obligation on a public institution to have rules and to stick to them.

Mr B McCrea:

Yes, but in certain areas — the voluntary grammar schools, for example, feel that they are doing a good job — there is an issue. It would be helpful to see what the model rules will look like. We could then provide much more reassurance to people that they are in fact common-sense proposals.

Mr C Stewart:

That is a fair point. If there are those in schools who feel — justifiably — that they have been doing a very good job for a long time and that their governance arrangements constitute best practice, we would encourage them to assist the Department in the development of the model schemes.

Mr B McCrea:

That is a useful way of moving forward. It would be useful if people felt that, rather than arrangements being imposed upon them, — albeit benignly — they were involved in the development of the arrangements and could establish what room for manoeuvre there was.

Although I agree that there is a need for codified standards, it would be useful for us in deliberating the Bill if we knew what those were and what provision there would be for people to amend or become part of the development of those standards.

Mr C Stewart:

That is a fair point, and the Department wants to encourage that. The provisions are not an attempt to control or to suggest that one size fits all; there is considerable room for manoeuvre. The Department accepts that boards of governors and trustees of schools are best placed to know what governance arrangements work best for them. If they have a model that works well for them and which meets the Department's requirements for sound governance arrangements, there is no reason why those arrangements cannot be rapidly approved, or, indeed, become a model scheme for adaption by other schools.

Mrs M Bradley:

Boards of governors seem to be scrupulous in doing their job. They are volunteers, and we must be careful not to cause any problem for them, because many teachers and principals greatly depend on their boards of governors. The board of governors is the heart of a school, and we must be careful with that.

Mr O'Dowd:

I agree that boards of governors must be involved in the development of management schemes. The question seems to be whether there is a need, in principle, for such schemes. No argument that holds water can be made against the need for having schemes of management.

This morning, we saw the PAC report, and in my time on the PAC we produced a governance report. There is an onus on all Departments to ensure that arm's-length bodies — in this case one could consider boards of governors as arm's-length bodies — that spend public funds must have written contracts, in this case management schemes, so that there is proper governance between those bodies and the relevant Department. Things must be properly managed, and, no doubt, in 99·9% of cases they are. However, if something goes wrong, one must be able to go back to the agreement to determine whether procedures were followed or whether they were robust enough and must be changed or managed in a certain way. Consequently, management schemes are important. Indeed, they must be developed in conjunction with boards of governors, but this amendment is designed to ensure that they are in place.

Mr C Stewart:

That is a valid point, and, further to what Mary said, we are cognisant of the fact that boards of governors are taking on significant responsibilities in a voluntary capacity. Governors and potential governors tell us that they want training, support, advice and, above all, clarity with respect to what they are responsible for and how they are expected to carry out their duties. That is what the scheme of management will provide: a clear framework within which governors will be able to operate.

Mr B McCrea:

We all agree with everything you said; however, we are attempting to work out when misperceptions might arise or, in exceptional cases, when we might have to do something. People are concerned that a one-size-fits-all approach, in which a model that is adopted is not theirs, will cause problems. All that we are trying to point out, as John rightly said, is that it is to governors' advantage to have model rules set down and to have our help available. It would be to their disadvantage to implement a draconian system with which they are unhappy. As I said, we are trying to identify problems that are likely to arise in order to find some way to reassure governors.

I outlined my position at the start: given the lack of trust, I want everything to be stipulated in the Bill. Trevor asked why I could not just take things on trust. Can we find a middle way? The governance of governors is a serious matter that is strategic to everything that we are attempting to do, so we must address it. We have raised our concerns, and we would like the Department's assistance to identify some way to deal with them.

Mrs M Bradley:

Some boards of governors have said that they want to continue doing the job; however, if concerns or worries arise, they might walk away. I hope that I am not offending anyone, but boards of governors include excellent people who know exactly how the work is done. They want to continue doing the same work, so we must not introduce too many changes that will make them feel that they were not doing the job right in the past. Some of them may walk away, and schools do not need that.

Mr C Stewart:

I agree with you entirely, and we wish to reassure governors on that point and on the points that Basil made. Indeed, management schemes are not a new requirement, and it is not implying that boards of governors have been somehow deficient in how they have led schools. Schemes of management have been a requirement in legislation since 1998; we are simply bringing those provisions up to date. We agree entirely with your sentiments about the need to support and not discourage potential governors.

With respect to Basil's point about providing assistance to identify a middle way, I agree entirely, and we will make every effort to do so.

We have framed the legislation in that way because we recognise the differing views from different schools and different boards of governors; some say that their job is difficult enough and that they do not want to write the governance rules; they want a sensible model that they can adopt and put into practice. Equally, other boards of governors do not want to be controlled and do not support a one-size-fits-all approach. They say that they have operated well for 350 years and that they do not have to prove their competence. They want us to approve their governance arrangements and allow them to get on with the job.

The legislation is flexible enough to cope with both groups and all shades of opinion in between. If a school wants to contribute to the development of a model scheme or merely adopt the model scheme, it can do so. If a school is not interested in the model scheme and feels that it has a perfectly acceptable and proven model of governance, it can submit that view to the ESA, which should approve the scheme rapidly.

Mr Lunn:

Schemes of management have been a requirement in legislation since 1989, according to the Department.

Mr C Stewart:

I beg your pardon; I stand corrected.

Mr Lunn:

That is 20 years instead of 11.

Mr C Stewart:

Time flies when reading such information.

Mr Lunn:

Again, I wonder what all this is about. The Association for Quality Education's (AQE) objection is probably the most significant, because that body makes the running on many issues at the moment. However, I do not get it. If schools have theoretically had to provide a scheme of management for the past 20 years — whether or not they have — the legislation appears only to formalise the situation and ask schools to submit the information to the ESA rather than to the Department.

Mr C Stewart:

Sometimes the AQE will not take yes for an answer. *[Laughter.]*

Mr Lunn:

I know; I am not getting at the AQE. I sympathise with Mary's comment about the fragile nature of governors and their commitment to schools. I understand that sentiment, because governors, along with everybody else, must be wondering what is going on. It is an easy job to walk away from unless the individual is highly committed, which most governors are. Therefore, I do not want to impose more work or stress on governors. However, the legislation does not do that.

Mr C Stewart:

That is an important point. The thrust —

Mr Lunn:

The legislation should formalise the situation for governors and offer ease rather than stress. They will know exactly where they stand, because they will have a formal scheme, which they should have had in the first place.

Mr C Stewart:

That is the intention of the legislation. It is not intended as a control mechanism or a mechanism by which the ESA will dictate to boards of governors. It will give boards of governors a clear framework in which to discharge their responsibility to lead and manage schools. That is an

important role. The thrust of many RPA proposals is not, as some people characterise it, command and control. That is why the Department will place duties on the ESA to provide training and support for governors and professional staff in schools, because they will lead and deliver. The ESA's job is to support, not to control or regulate.

Mr B McCrea:

People do not understand the benign nature of the Department's interest. A board of governors might have operated successfully for some time and might think that the Department will use the legislation to dictate a model scheme for the future regardless of the scheme that has operated in the past. That is why they are concerned. They need reassurance; that is the AQE's view. We must explain the Department's benign interest in order to make progress.

The Chairperson:

There are three elements. If the situation is the same as in the past, why does clause 31(4) state that the:

"submitting authority of a school shall also submit to ESA such information as ESA may require concerning the extent (if any)".

The second part of that quotation is critical. The ESA will be given the power to require schools to include certain matters in their scheme of management.

The Minister's initial position was that employment schemes should be fit for purpose. However, genuine concerns raised by stakeholders forced the Minister to amend that provision. We now have regulation for employment schemes. Yesterday, the Committee discussed the clarity and certainty of and confidence in employment schemes; we want to instil those three elements in boards of governors. We could, surely, do that through regulation. Moreover, if schemes of management are so important, why in September 2009, three months before the establishment of the ESA, does the Department not have the schemes in place?

If a school wanted to treat the Department or the ESA as a friendly colleague, explained that it did not want to be burdensome and asked for a scheme of management, the ESA would have to reply by saying that it did not have one, even though there is a requirement in legislation for that to be in existence.

Mr C Stewart:

I will endeavour to reassure you on all three points. You asked why there are no model schemes when the operative date is so close, but there are model schemes. Schemes are in existence in the vast majority of schools. Standard schemes have been adopted in the Catholic maintained sector for Catholic maintained schools, and in the controlled sector for controlled schools. I have no doubt that those schemes could be improved, and, in due course, the Department expects the ESA to produce new and better models. If a board of governors asks the existing authorities or the Department for help or a model scheme, we can provide that.

You asked why the Department does not follow the same route used for employment schemes and regulate the content of schemes of management. The driver for that change, and the concern that was expressed by stakeholders, does not arise. The purpose of a scheme of employment is to apportion functions between the ESA and a board of governors to decide who does what in the employment arrangements.

Some stakeholders were concerned that the ESA would not be benign in that matter; that it would have too much power and too many functions and encroach upon the proper role of boards of governors. That was never the Department's intention, and it is not the ESA's intention. However, in recognition of those concerns, the Minister proposes regulations that will govern what can be included in an employment scheme, and will put absolutely beyond doubt the ability of the ESA to gather too much power unto itself, even if it wanted to.

That issue does not arise for schemes of management, because they do not apportion functions between the ESA and boards of governors: all the functions are for boards of governors. A scheme of management is simply a set of rules under which a board of governors will operate. The ESA will have no role in the management of any school, even controlled schools. One key change that will be made in the second review of public administration (RPA) Bill will make boards of governors the managing authorities for those schools, not the ESA. The ESA will have no role in the operation of any scheme of management; therefore the Department does not see the same need to regulate as it does for schemes of employment.

The Committee is concerned about the clause that allows the ESA to ask for information in particular circumstances. The reason that I asked for that particular provision to be included is much simpler than you fear. Stakeholders asked us to minimise the bureaucracy. They told the

Department that they did not want to submit a draft scheme to the ESA only to find that it takes the ESA 18 months to approve or suggest further work be done on that scheme. Stakeholders were very concerned that we would introduce a bureaucratic process that could not be operated by the ESA.

The intention behind the clause is to allow a school to propose a scheme of management, which is one of the model schemes that the ESA has produced and which should therefore be approved instantly.

Equally, a school might present a draft scheme of which the first 19 out of 20 paragraphs are the same as those in the model scheme, with the twentieth paragraph slightly tailored because it wants a slightly different approach. That would allow the ESA not to worry about the first 19 paragraphs because they are standard, and it could look quickly at paragraph 20 and clear the scheme. The purpose behind that is not to impose a draconian information-gathering regime on a board of governors but to provide a quick and easy route for the approval of schemes so that we can cut down on bureaucracy. Mary stressed the importance of that very point.

Mrs M Bradley:

Boards of governors are totally confused by the way in which the education system is going. They express that view all the time at governors' meetings. Governors have served schools well for years, and it is very important for them to look after their schools. We must encourage them.

Many governors are tired and are getting on in years, and they say that they could not cope with the new system. That is simply because no one has ever addressed them or told them what will happen. That has happened as a result of neglect by the Department. Volunteers give a hell of a lot of hours, and a hell of a lot of work goes into those hours. Someone must at least recognise the work of governors and talk to them to try to save good people from walking away.

Mr C Stewart:

That is a very valid criticism. I shall not attempt to defend the Department if that is the way that governors feel. The message for the Department and the existing organisations that work closely with the governors — the education and library boards and the Council for Catholic Maintained Schools (CCMS) — is that they must recognise their responsibilities to work with the boards of governors to prepare them for the change and to ensure that they are provided with accurate

information about the effect of the provisions and are not unnecessarily or unduly concerned by the one or two wilder speculations from some stakeholders.

Mrs M Bradley:

Chris, although you are doing a good job trying to convince the Committee about that —

Mr C Stewart:

Is that recorded in Hansard, Chairman?

Mrs M Bradley:

Someone from the boards must go out and convince the governors to stay where they are.

Mr C Stewart:

That is very important.

The Chairperson:

Is it appropriate for the ESA to become the employer of all grant-aided schools before schemes of management are in place?

Mr C Stewart:

Schemes of management will be in place. If we do nothing at all, there will be schemes of management in the vast majority of schools on 1 January 2010.

The Chairperson:

The existing ones?

Mr C Stewart:

Yes. It is important that new schemes of employment are in place by that date, because those do not currently exist.

Mr B McCrea:

Some people looked at the clauses negatively, but you said that there is plenty of flexibility and that if a scheme is pretty close, that is OK. Is there a set of guiding principles on which the ESA will base its judgement? As John mentioned some time ago, certain guiding principles are needed

for corporate governance. Provided that those are met, it should be OK. People are worried that the ESA may, for other reasons, use those powers to take control. There could be a set of parameters within which the ESA must work. The ESA might say that annual accounts must be produced. Would it also say what those accounts must look like? How far could it specify? What are the terms of reference that the ESA will use in coming to its determinations?

The Chairperson:

Your question is: what are the guidelines? We have not seen them. We are taking it on trust, and that is the problem. On the issue of employment, we heard stakeholders tell the Committee that they did not trust what the Department was doing. Steps were taken, and we await the response from those stakeholders. I assume that they will be reasonably content with the proposed amendments.

However, schools and stakeholders have raised the concern that they do not know what the guidance on the schemes of management or the model scheme will be. Perhaps that is something that the Assembly and the Committee need to see.

Mr C Stewart:

I understand that point, and I understand the perceptions that some stakeholders have. That is why we said to stakeholders that they should not wait for us to impose our wisdom, or lack of it, on them from on high. They are the people who run schools on a day-to-day basis, and they know what works best, so we asked them to work with us to develop the models.

Basil asked who guards the guards, or who sets the rules. A hierarchy of rules comes from the Department of Finance and Personnel (DFP) and the Audit Office through the guidance that they produce on how public authorities are to be run and governed and how accountability is to be operated for public finance. We are all obliged to stick to those rules.

When it comes to our stewardship of the ESA, we will be looking to ensure that it does not impose unnecessary bureaucracy on schools. Therefore, if schools have a form of annual report or a set of accounts that conform to a standard model, we would not expect the ESA to make those schools jump through hoops simply because the ESA would prefer a different form of table or a slightly different approach to an annual report. That is not in anybody's interests. It would take up scarce resources and scarce time and take people away from the important job of leading

their schools. That is certainly not something that we would tolerate.

Mr B McCrea:

The big problem is what happens if you get promoted?

Mr C Stewart:

There is little danger of that. *[Laughter.]*

Mr B McCrea:

Judging by the way that things are going today, you are doing really well. You sit here, with your silken Civil Service skills, and say that everything is rosy and that everything will be fine.

Mr C Stewart:

I am just checking that Hansard got all that. *[Laughter.]*

Mr B McCrea:

For the benefit of Hansard, you are very good at your job. However, I am trying to make a point. I am not doing so to be difficult; it is a new term and a new start and we are trying to engage. When we look at legislation, we have to point out our issues and suggest ways in which we think that those issues could be fixed. You are saying that you are not legislative counsel and that you do not understand the way that things are going down. However, I wonder whether there is not a middle way that provides basic guidelines — guidelines to which we would be adhering anyway. That way, people can agree that what we are doing is reasonable. If we include certain accountability measures, people can check those and see that what is happening is correct. It would create a locus for what the ESA will be looking for.

Everything that you said was absolutely right. If someone comes along with a better idea, we can have a discussion on that and move forward. However, looking at the Bill, it is the same as any contract that I have ever seen. Many people would think: "I'm not signing that." For example, clause 33(1) states that:

"The submitting authority of a grant-aided school—

(a) shall if ESA so directs or revised guidance issued under section 31(3) so requires".

The language, which I understand to be legislative counsel's type of language, is not particularly encouraging to people who think that they are running their schools.

Mr C Stewart:

That is a fair point, and I thank you for your earlier kind words. I have to confess to the Committee that they contrast with the description of me that I heard at the Presbyterian General Assembly. There, I was described as a Marxist brute. *[Laughter.]*

Mr B McCrea:

They may have access to a higher truth than I do.

Mr C Stewart:

I will leave members to decide which description is the more apt.

I understand the point that you are making. Anyone who is looking for a minimalist degree of control, or as hands-off a relationship as possible with the ESA, is not likely to find encouragement in the standard forms of words that are used in legislation. We will have to work hard to get the trust that, as you quite rightly said, needs to characterise the relationship. One of the things that I would do is tell schools — particularly the voluntary grammar schools, which have very significant concerns about this and which would rather not be part of the arrangements if it were at all possible — that this is the policy of the Minister and the Government of the day, but that we want to make the arrangements work as best we can for them.

I would invite them to tell us what their minimalist model for a scheme of management would be — the simplest, most straightforward set of governance rules that, left to their own devices, they would adopt for themselves and that they would see as being necessary for the smooth running of their schools. That seems to me to be a good starting point for a model scheme for schools that want the maximum independence from the ESA. The Department would then tell the ESA that if it wants anything more than that in a scheme of management it would have to produce a pretty convincing argument, because those who run schools tell us that that is enough.

The Chairperson:

In fairness, Chris, it was not just the voluntary grammar schools that raised that concern. The North Eastern Education and Library Board (NEELB) said:

"These schemes take on added significance when it is widely acknowledged that the responsibilities of Boards of Governors from 1st January 2010 will change fundamentally, yet it is the understanding of the NEELB that Boards of Governors will be encouraged to operate under existing schemes of management which in the view of this Board are 'no longer fit for purpose'. In the view of the NEELB it is essential that model schemes are available to all schools with effect

from the introduction of ESA."

However, we do not have them.

Mr Stewart:

If the representatives of the NEELB were here I would ask them why the managing authority for controlled schools is operating schemes of management that, by the board's own judgement, are no longer fit for purpose. That is a question that only the NEELB can answer. I recognise their concerns, and they are entitled to express their views, but it must also be recognised that the education and library boards have opposed this part of the Minister's policy. They do not agree with the policy of giving schools autonomy to run their day-to-day affairs. They would prefer that, within the RPA, we had adopted a model of controlled schools administration, and they have put forward their arguments for that. However, that is not the Minister's policy. The Minister's policy, recognising the views that have been put by other stakeholders, is that schools are most successful when they have the opportunity to run their own affairs on a day-to-day basis without undue interference from education authorities. That is the thrust behind those proposals and right through the RPA.

The Chairperson:

Trevor, do you have any comments?

Mr Lunn:

I am OK, Chairperson. Let us just say that earlier comments might apply again, but I will not delay proceedings.

Mr O'Dowd:

I concur with what Chris said about the NEELB's comments about schemes of management. If that board is admitting that its schemes of management are not fit for purpose, the Education Committee should write to it asking what it has done to ensure that those schemes of management are brought up to standard. In that instance, its governance arrangements are obviously inadequate. Some of the comments by the education and library boards about the Education Bill have been designed to be unhelpful; I am being as moderate as I can be about some of those comments. The education and library boards have been charged with the governance of the education system for a long time. Instead of reflecting their experience to us, they have, until redundancies come into effect at least, adopted an oppositional stance.

I say "fair play" to anyone who steps forward to take a place on a board of governors. I served on a board of governors for some time, and I was shocked by the amount of work involved and the commitment it took to run the school. However, people do step forward and volunteer to do the job. People who serve on those boards are there not only to look after the pupils' education, but to look after a vast amount of public funds. I think Chris mentioned a figure of £1·8 billion — £1·8 billion of public funds that boards of governors are tasked with spending. As a scrutiny Committee of the Assembly, we must put in place the most rigid of governance schemes to ensure that that money is used properly and that the boards of governors look after pupils' education. That is our task; we must ensure that that happens.

Should we introduce legislation that makes it impossible for boards of governors to operate? Of course not. Should we encourage and help boards of governors? Yes, we should. The development of those schemes of management must be achieved in conjunction with the boards of governors. If the model schemes suit some boards of governors, so be it. If other boards of governors believe that they can tweak those model schemes, that should be encouraged. The bottom line is that if a board of governors steps forward and refuses to implement a scheme, or if the scheme is inadequate, then that board of governors must be challenged. They are there to educate children and they are tasked with using £1·8 billion of public funds effectively. The Education Committee needs to scrutinise that.

The Chairperson:

We could get into that debate, but it is not the time or the place. Various stakeholders have commented on the legislation. Various elements of the education world, not just voluntary grammar schools or the Governing Bodies Association (GBA), have made very critical comments. The Minister has commented on certain education sectors, describing them as an unhelpful minority. If we get into that, we will be here all day.

Mr O'Dowd:

The GBA and other bodies are perfectly entitled to criticise and comment, but a governance body that says that its schemes of management are not up to scratch needs to be challenged. An education board is telling us that its schemes of management are not up to scratch. What has that board done about it? If the board has not done anything, there is a serious question mark hanging over it.

The Chairperson:

Chris, do you have any other comments?

Mr C Stewart:

We have gone over the ground fairly extensively.

The Chairperson:

Having considered clauses 30 to 33 and the proposed amendments, are members content with them as drafted? I register the fact that I still have concerns.

Mr O'Dowd:

We agree with the amendments, but if people want to return to them, so be it.

Mr Lunn:

I take it that this is not a majority decision and that if any member has a concern, they can register it.

The Chairperson:

Yes.

Clause 34 places a duty on the board of governors of a grant-aided school to promote high standards of educational attainment by pupils of the school, and places a duty on the board of governors to co-operate with the ESA regarding actions that the ESA has undertaken to promote the achievement of high standards of educational attainment.

Clause 35 states that the board of governors shall include community governors, and defines them as:

"persons living or working in the local community".

Clause 36 allows part-time assistant teachers to be eligible for election to a board of governors.

Paragraphs 191 to 210 of the draft Committee report outline the issues that were raised in

relation to those clauses. In its submission, C na G sought a legal requirement that governors of Irish-medium schools should be committed to the continuing viability of the school as an Irish-medium school, mirroring the legislative requirement for integrated schools. The Minister seemed to agree with C na G in correspondence that the Committee has seen.

Chris, do you have any other information on that?

Mr C Stewart:

The Minister is still considering the need for the amendment suggested by C na G, along with two others, which are not related to these clauses: one from Sir Reg Empey, and one from the National Society for the Prevention of Cruelty to Children (NSPCC), which we will come to in due course. The Minister has not yet come to a decision on those three amendments.

The Chairperson:

Time is of the essence.

Mr C Stewart:

We appreciate that.

The Chairperson:

The Bill will allow for part-time teachers to become governors. How will that work in practice? That has not been the case to date.

Mr C Stewart:

It has not been the case to date, and we think that that is a weakness and inequality in the current legislation, which is the reason for the proposal. It would operate in exactly the same way as it would for other members of staff. Part-time teachers will be eligible for nomination and election to staff governor.

The Chairperson:

Could a situation arise whereby a part-time teacher becomes a member of one school's board of governors while also teaching at another school? Is there an issue of conflict of interest around intake and enrolment of pupils?

Mr C Stewart:

I recognise the point that you are making, but we do not see schools operating in that way. Increasingly, it needs to be the case that schools that serve a particular community must recognise that they are part of a system and that they should work in co-operation and not in competition. That is particularly true for post-primary schools, which clearly need to co-operate in order to deliver the curriculum entitlement to the communities that they serve. That would lessen the scope, if any, for conflict of interest in that type of situation.

Miss McIlveen:

Why were they excluded in the first instance? Was there a rationale for it?

Mr C Stewart:

I do not know; I could speculate, which may be unhelpful. Perhaps it was thought at the time — and we are going back quite some time as regards the legislation — that only those working in a full-time capacity would be able to represent the views of the body of staff in the school. The thinking has moved on quite considerably from those days.

Miss McIlveen:

I suppose that there are now full-time teachers who may be working reduced hours or who may have moved to part-time teaching.

Mr C Stewart:

I think that that is right, and the incidence of part-time working is probably much higher than it would have been when the legislation was drafted originally.

Mr Lunn:

I would like clarification around an amendment to the previous Orders. Does that mean that assistant teachers always could be members of the board of governors?

Mr C Stewart:

Yes. If I recall the definition correctly, an assistant teacher means anybody other than the principal and vice-principal.

Mr Lunn:

So the provision is just being extended to include part-time teachers.

The Chairperson:

An issue has been raised around clause 35, which mentions community governors. Some people have argued that it is very prescriptive to define a community governor as someone who lives and works in the local community. There is no definition of what the local community is, because the local community for one school will be completely different to the local community for another school. Is the local community defined by geography, by religion or by social and economic boundaries? We run the risk of running into another legal minefield as regards how we define a person who lives and works in the local community.

Mr C Stewart:

We will do our best to keep the lawyers out of it. We recognise the concerns of stakeholders, but trying to adopt a tighter definition than the one we have might be unhelpful. It would run the risk of imposing a one-size solution that would certainly not fit all. We would interpret that definition as flexibly as necessary, with the determining factor being that we want to get the best people possible to serve on the boards of governors and to lead the schools. A working interpretation would be that the local community is the community served by the school. That, of course, will vary from school to school and from sector to sector.

Some of the larger post-primary schools pointed out that they have very large catchment areas; in some cases, pupils travel over half the country to attend the school. Therefore, the communities served by those schools cover large geographical areas. I do not think that we would use that definition, or permit the ESA to use that definition, to stand in the way of any perfectly reasonable appointment of a community governor to a school — someone with the skills and competencies, the dedication and commitment to give up their time to play a leading role in a school. If there are people who are prepared to do that, we would welcome them with open arms. We would not want to use any obstructive definition to try to keep them out of a school.

The Chairperson:

Members have considered the clauses and any proposed amendments. Are members content with how they stand in the Bill?

Members indicated assent.

The Chairperson:

I still have a concern around the issue of community governors.

Clauses 37 to 42 deal with inspections on behalf of the Department; powers of inspectors; reports and action plans; inspections of library premises; inspections on behalf of DEL; and assessors and lay persons. I will not read aloud all the issues around clause 37, but the stakeholders' comments give an overview. Members should refer to paragraphs 212 and 213 of the draft Committee report.

I note the Department's response to the Belfast Education and Library Board's comment on the requirement in clause 37(1) that schools be open at all reasonable times to inspection. The Department has clarified that the concept is well established in law and has explained that the Department would inspect schools when teaching, learning and ancillary activities are going on.

The Department proposed an amendment to clause 37 as set out in the Minister's letter of 17 June. It read:

"Clause 37(5) places a duty on inspectors to monitor, inspect and report on the nature, scope and effect of advisory and support services provided or secured by ESA under Clause 13 of the Bill. An amendment is proposed to include references to Clauses 24 (examinations and assessments), 25 (other functions of ESA in relation to the curriculum, examinations and assessments), and Clause 13 (advisory and support services) in order to bring these functions within the inspection regime."

On 4 September, the Committee received the specific wording for the departmental amendment. It added at the end of clause 37(5) the additional words:

"and on the discharge by ESA of its functions under sections 24 and 25 (except section 25(1)(b))."

The Department states that that amendment extends the remit of the Education and Training Inspectorate to allow the inspection of curriculum and qualifications.

Mr C Stewart:

On that first point, I reiterate the reassurance that we offered to the Committee in response to the Belfast Education and Library Board's point. I am not an education inspector, but I was an inspector in a previous career, and I can assure you that in almost every instance where there is legislation that involves inspectorate functions engaging with a business or an authority, the standard formulation is that a business should be open at all reasonable times; in other words, when business is being carried out. However, it certainly does not allow the Education and

Training Inspectorate to knock the door of a school at midnight and require admittance.

I now turn to the scope of the clause and the amendment. In the clause as originally drafted, we proposed powers for the inspectorate to inspect, on behalf of the Department, some of the ESA's functions. The Minister accepted the chief inspector's advice that in order to produce a more rounded picture of what the ESA does and of its effectiveness, the inspectorate ought to have the right to use its formal powers to inspect a broader range of the ESA's functions, particularly around the issues of curriculum, curriculum support and examinations. Those are the front-line support functions that the ESA needs to provide for boards of governors and staff so that they can do their jobs. Therefore, it is important that the Department ensures that the ESA is doing its job effectively in providing those functions; hence, the proposed amendment to broaden the scope of the inspection powers.

The little exception to the amendment is the function of the ESA in providing advice to the Department. That simply reflects the reality that the provision of advice is not something that one can really inspect. The ESA will provide advice, and we will either accept it or not accept it. If we think that the ESA's advice is not very good, we will soon say so. However, advice is not really something that is amenable to inspection.

The Chairperson:

In response to the concern of the Association of Northern Ireland Education and Library Boards about the right of inspectors to access information held by a school under clause 38, the Department has confirmed that the powers are similar to those in other jurisdictions and do not give the right to access data that would be prohibited under statute, such as the Data Protection Act 1998.

Mr C Stewart:

That is correct. We have confirmed that point. My colleagues in the inspectorate sought clarification about access to information. On receipt of further legal advice, we clarified that the legislation does not give anybody the power to contravene the Data Protection Act 1998.

The Chairperson:

The Ulster Teachers' Union is concerned about who else could access reports.

Mr C Stewart:

The legislation governs that matter and sets out the rules on how the inspectorate must deal with the reports. The Data Protection Act 1998 comes into play again. People who have access to information have that access for a particular purpose. Using the information for a different purpose contravenes the Act.

The Chairperson:

Clause 39(3) imposes an obligation on boards of governors, as the responsible authority, to prepare an action plan in response to an inspection report. One of the education and library boards commented that the Bill places greater responsibility for educational standards on boards of governors. Furthermore, it mentioned the need for greater rigour in the inspection process and for a follow-up report with clear outcomes that will allow those charged with management responsibility at local level to discharge their duties. The Department said that it would consider the North Eastern Education and Library Board's comments. Has the inspectorate considered that matter?

Mr C Stewart:

The inspectorate has taken that comment on board, and inspectorate colleagues contend that they regularly seek feedback from the Department, schools and stakeholders on the effectiveness of their inspection activities, particularly inspection reports. I know that the chief inspector recognises — as did his predecessor — the need to strive constantly to improve and sharpen the focus of their reports so that they meet their objective, which is to provide boards of governors and leaders of schools with the guidance that they need to improve operations in schools. That is the thrust of the inspection regime. It is not intended to be punitive; it is intended to be supportive and to help schools to discharge their responsibilities. The quality of inspection reports is vital. The inspectorate always welcomes feedback on its reports and will continue to do so.

The Chairperson:

In its response, the Department said that the legislation will merely bring powers into line with best practice in other jurisdictions. What new powers, if any, will the legislation give the inspectorate?

Mr C Stewart:

The new powers, such as requiring persons present to assist with access to documents, are outlined mainly in clause 38. Those are fairly standard powers of inspectorate provisions in a variety of public services. The legislation is imported almost directly from the equivalent English legislation, the School Standards and Framework Act 1998.

The Chairperson:

The Department proposes an amendment to clause 42, which relates to the appointment of assessors and lay persons for the purposes of inspection. The Department for Employment and Learning has requested an amendment that requires the Department of Education to consult it before appointing assessors and lay persons.

Mr C Stewart:

That is correct, and we have proposed a similar amendment for inspections that are carried out on behalf of the Department of Culture, Arts and Leisure (DCAL). If those functions are discharged on behalf of the Department for Employment and Learning or DCAL, it is not unreasonable for those Departments to have a say in who is appointed to carry out the inspections.

The Chairperson:

Are we still awaiting that amendment or is it incorporated in —

Mr C Stewart:

It should be on the list.

The Chairperson:

On the subject of lay persons, officials noted the error in the section of the explanatory and financial memorandum that relates to clause 42.

Mr C Stewart:

That is correct. A very important "not" was left out or mistakenly included in the sentence. There is a disparity between the Bill and the explanatory and financial memorandum. The Bill is correct; the memorandum is wrong.

The Chairperson:

That will, I take it, be changed.

Mr C Stewart:

The memorandum will be reprinted in due course, whereupon we will correct the error.

Are members content to group clauses 37 to 42?

Members indicated assent.

The Chairperson:

Clause 43 is "Grants for educational and youth services etc." Members will sit up at the mention of "grants". Perhaps we should take a moment to remind ourselves of the clause's provisions. It allows the Department for Employment and Learning and DCAL, in accordance with the regulations, to pay grants to persons who offer a service or carry out research that is connected to education. Those grants will not be paid to the ESA, trustees or managers of a voluntary or grant-maintained integrated school or the governing body of an institution of further education. Paragraphs 215 and 216 of the draft report and the spreadsheet contain relevant information.

YouthNet sought an amendment to clause 43, which deals with the purposes for which grants may be paid, the effect of which would be to refer to educational services and youth services in the same clause. Clause 43 (1)(a) would then read that: "the Department may pay grants, etc." Have members any comments? Chris, can you clarify that no amendment was made and that the Department did not consider one necessary?

Mr C Stewart:

We understand YouthNet's position. It has an understandable wish to ensure that youth services, early-years services and schooling are treated on the same basis and are given parity of esteem, if I may use that phrase, wherever possible in the legislation. That is entirely laudable, and we support it.

However, every so often, that runs up against technical problems. Members may recall discussion on clauses 2(2)(a) and 2(2)(b), which we will deal with again in more detail. Sometimes, for technical reasons, it is simply not possible to include all the services in one

provision, mainly because of the differing age ranges of those in receipt of them. In that case, the construction of the clause was determined by the Office of the Legislative Counsel. Its view is that, for technical reasons, that is the best way to draft the clause.

There is no difference in effect between what the clause, as drafted, allows to be done and what YouthNet wants to be done. It is a standard grant-making provision. In fact, it is not new: it is a direct lift and re-enactment of article 115 of the Education and Libraries (Northern Ireland) Order 1986. It does not introduce any new policy or grant-making regime. It simply tidies up legislation in the way that legislative counsel believes is technically sound.

The Chairperson:
Are members content?

Members indicated assent.

The Chairperson:
Clauses 44 to 48 deal with the protection of children and young persons. I refer members to paragraphs 220 and 222 of the draft report. At the informal reception, the Committee received a suggested amendment to clause 47 from the National Society for the Prevention of Cruelty to Children (NSPCC). The suggested amendment would enable the ESA not simply to issue directions to boards of governors but also to school principals when appropriate. The NSPCC memo and accompanying papers was forwarded to the Department on 15 July 2009.

Mr C Stewart:
The Minister is considering that suggestion, Chairman. I will not pre-empt her decision. One of the factors that she will want to consider is whether such an amendment would be appropriate because it may risk usurping the proper role of boards of governors. It is for boards of governors to lead and manage schools; it is for them to lead and manage principals and their staff. If we break the link, as it were, and allow the ESA to come between boards of governors and principals, that may not be appropriate. That is one matter about which other stakeholders might have significant concerns.

Mr O'Dowd:
The NSPCC is a respected body, whose views should be heard. However, how its views are

listened to is important.

Am I right in thinking that the amendment was proposed during the informal gatherings?

The Chairperson:

It was subsequently approved.

The Committee Clerk:

It was received late and, subsequently, the Chairperson gave his approval for it to be forwarded to the Department as a late submission. We have had several late submissions.

Mr O'Dowd:

The Committee agreed which bodies would attend evidence sessions, and we received submissions from those bodies. However, a body — albeit a respectable body — came in late and submitted an amendment that was forwarded to the Department on behalf of the Committee. That seems to be an improper process.

The Chairperson:

I disagree. We can receive submissions during the Bill's scrutiny. I think that we have a duty to allow organisations with bona fide concerns to raise those with the Department.

The Committee Clerk:

Several sectoral bodies have followed up their correspondence in the initial evidence. The Northern Ireland Commission for Catholic Education (NICCE) and Comhairle na Gaelscolaíochta (CnaG) are two examples. We have had a great deal of correspondence.

Mr O'Dowd:

Those bodies gave evidence to the Committee. Did the NSPCC give evidence to the Committee?

The Chairperson:

The informal receptions were part of the Committee's work, so it is not outside the remit of the Committee.

Mr O'Dowd:

I have no difficulty with the NSPCC — it is, as I say, a respectable body — however, there is a process. Nonetheless, what is done is done.

The Chairperson:

Are we awaiting something from the Minister?

The Committee Clerk:

Yes. The Minister will respond to that.

The Chairperson:

Some members said that they have to leave at 11.00 am. If they do, the Committee will become inquorate. We have reached clause 49.

Mr C Stewart:

Will we take the rest of the clauses on the nod, Chairman? *[Laughter.]*

The Chairperson:

No. We will resume on Wednesday morning at 10.00 am in room 144.

Mr O'Dowd:

Will we meet all day on Wednesday? What are the arrangements?

The Chairperson:

I thought that it would be helpful to start the meeting on Wednesday morning, because it would give us more time to get more work done.

The Committee Clerk:

Chairperson, perhaps you should let members know that there is a possibility of another meeting next Thursday.

The Chairperson:

Would you prefer to have an all-day meeting on Wednesday, or would you prefer to do as we have done this week and meet on Wednesday and Thursday?

Mr Lunn:

We will have the same problem on the Thursday; there will be a maximum of only two hours.

The Chairperson:

That is correct. Do you want to have those two hours on Wednesday? We could start at 9.00 am, have lunch at the Committee and finish at 2.00 pm or 3.00 pm.

Mr O'Dowd:

I am flexible on both days.

The Chairperson:

Members, come prepared to have a longer session on Wednesday.

The Committee Clerk:

We will have to switch Committee rooms at lunchtime. We failed to incorporate the September monitoring presentation from the Department into yesterday's or today's meetings. We have yet to get papers on that.

The Chairperson:

We would do better to leave that until we get papers, and we will do it the following week.

The Committee Clerk:

We will do it on Wednesday if we can get the papers.

The Chairperson:

Chris and Eve, thank you for attending this morning's Committee meeting.