



Northern Ireland
Assembly

**COMMITTEE
FOR EDUCATION**

OFFICIAL REPORT
(Hansard)

Education Bill

23 September 2009

NORTHERN IRELAND ASSEMBLY

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FOR EDUCATION**

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Mary Bradley
Mr Jonathan Craig
Mr Trevor Lunn
Mr John McCallister
Mr Basil McCrea
Miss Michelle McIlveen
Mr John O'Dowd
Mrs Michelle O'Neill
Mr Alistair Ross

Witness:

Mr Chris Stewart (Department of Education)

The Chairperson (Mr Storey):

Issues that are set out in the correspondence from the Minister of Education are relevant to the Bill and will be considered at the appropriate stage, unless members have other comments on the correspondence. The Committee had its concerns and was criticised when it asked for an extension to consider the Bill.

One thing that has bedevilled us over the past months is the lack of haste in producing amendments. Even yet, the latest correspondence states that the Minister is still considering the precise wording of an amendment, which will depend on advice from the Office of the Legislative Counsel. The Minister says that she will endeavour to let the Committee have the wording before the end of the Bill's Committee Stage, if possible. That stage ends today, after the Committee considers the Bill clause by clause.

Therefore, any amendment proposed subsequent to today's meeting would not be in the Committee report that is to be signed off next Wednesday. The Committee is time-bound to deliver that report to the Assembly by 30 September.

The Committee Clerk:

The Committee must sign off the report, as approved, next Wednesday at the latest. Today's deliberations are the final decisions on the clauses and schedules of the Bill so that the report can be produced, including its recommendations to the Assembly.

The Chairperson:

What happens if the Minister tables an amendment at Consideration Stage?

The Committee Clerk:

The Minister will choose a time in October, or indeed, a date of her choice, to bring the Consideration Stage debate forward. Standing Orders relate to the end of the Committee Stage and the beginning of the Consideration Stage debate. There must be a certain time gap, usually two or three weeks.

The Chairperson:

Can that period be longer?

The Committee Clerk:

It is the Minister's choice when that is brought forward. The final date for tabling amendments will be established when the date for the Consideration Stage debate is known. That will be the Thursday before the debate, which will be on a Monday or Tuesday. The Minister, Members and the Committee can table amendments to the Bill up until that time.

The Committee's report records exactly what was agreed at Committee Stage until today and until its publication next Wednesday 30 September.

Mr B McCrea:

Is there a schedule for those dates? Have we been furnished with that information in written format?

The Committee Clerk:

I can bring advice on Standing Orders in relation to the period between the 30 September and the possible dates that the Minister could suggest for Committee Stage.

Mr B McCrea:

That would be useful for the critical path analysis. Have we had clarification about what happens if we do not meet the deadline of 1 January 2010? There has been some discussion about the implications for the education and library boards if the Bill has not been passed by that time. If they are abolished, will they still be able to pay staff?

The Chairperson:

From my recollection of the correspondence, and Chris Stewart can clarify this, the preferred date was 1 January; however, the date of 1 April was mentioned.

Chris, can you join us? You will have to sit in the public gallery when we move to the clause-by-clause scrutiny, as that is part of the Committee's deliberation. It will be good to get some clarification.

Mr Chris Stewart (Department of Education):

It would not be a Wednesday if I did not get to join you at the table.

Mr B McCrea:

It is good to get your on your own for once.

Mr Stewart:

Support is only a shout away.

As regards Basil's question, if for some reason the Bill did not become law by 1 January, the education and library boards would not be dissolved; they would remain in existence and could continue to pay staff and discharge their functions.

Miss McIlveen:

The Chairperson mentioned possible amendments being tabled by the Minister, and the time scales around that. We are nearing the end of our Committee Stage.

Mr Stewart has attended the Committee on numerous occasions when it discussed the second Bill at length; members wanted to see it before concluding their deliberations. The Minister made it clear in her statement to the House that the second Bill was to have been introduced to the Assembly by June 2009. Has there been any sighting of the second Bill?

Mr Stewart:

The draft second Bill is with the Minister for her formal sign-off. As soon as she is content with it, the Department will send it to the Committee.

Miss McIlveen:

Is the Committee likely to see it by next week?

Mr Stewart:

That is the Department's aim. Unfortunately, I cannot send the draft Bill to the Committee until the Minister confirms that she is happy for me to do so.

The Chairperson:

The Committee's working assumption was that it would be content to proceed with the first Bill once it had sight of the second Bill; that has not happened. That is a major problem, because the Bills are inextricably linked and there are major problems, particularly for the controlled sector, in the second Bill. Members will correct me if I am misrepresenting the Committee by stating that it believed it would have sight of the second Bill before clause-by-clause scrutiny was reached. Today, the Committee will make decisions on the clauses of the first Bill.

Mr Stewart:

The Chairperson is correct. For some time, the Minister has intended that the Committee should see the second Bill before the first was signed off. I recognise that we are well into the eleventh hour in relation to that. It is unfortunate that the Committee has not received the draft second Bill. I will pass those points on to the Minister and I will let the Committee have the second Bill as soon as possible.

I hope that when members see it they will be reassured that the two Bills are complementary. The second Bill gives effect to the Executive's decision that there should be a single legislative programme to take through the entire RPA policy. Members will see that the gaps that they pointed out have been filled in by the second Bill. To use a well-worn phrase, I hope that members will see that there are no Trojan horses in the Bill; it merely gives effect to the other parts of the policy that must be put in place.

Mr O'Dowd:

I want to go through what the Education Bill says about the boards' life span. What would the process be for the boards to remain in existence until 1 April? Would that require legislation by the Assembly?

Mr Stewart:

No. It is important to emphasise that the Minister's aim is to have the legislation on the statute book and the ESA established by 1 January. If, for whatever reason, that did not take place, the existing legislation would remain in force, and education and library boards would exist as statutory organisations. The membership of those boards would have to be reconstituted at that point, but that is an administrative step.

Mr O'Dowd:

Would the Minister reconstitute the boards?

Mr Stewart:

Yes.

Mr O'Dowd:

However, in effect, the boards will come to an end on 31 December 2008, and, if the Minister

wished to, she would reappoint public representatives to a board or, as has been the misfortune in other cases, establish a commission.

Mr Stewart:

That would be possible.

Mr B McCrea:

What factors would the Minister have to consider if the education and library boards need to be reappointed for a short period? I am thinking about the decision whether to establish a commission or appoint members to a board.

Mr Stewart:

I will answer as fully as I can, with the caveat that we are talking hypothetically about a situation for which we have not planned and that is not on the radar at present. If the period involved were short, as Mr McCrea suggests, what is likely to be uppermost in the Minister's mind is the continuity and smooth operation of the organisations in the interim while awaiting the establishment of the ESA.

Mr B McCrea:

It would be useful to minute formally the points that are being made about what will happen, because there was some confusion. John O'Dowd referred to the fact that the Committee was of the opinion that the boards would disappear automatically, leaving a void. If the education and library boards do not disappear automatically but continue in existence, the Minister would have to decide whether to reappoint or establish a commission.

Mr O'Dowd:

The discussion has been useful. In that event, the 35-person administration body of the education and library boards would remain in place. However, I put on record my party's concerns that the boards may be reappointed for three to four months.

Mr Lunn:

The Bill will abolish the education and library boards when it becomes law. Is that correct?

Mr Stewart:

Yes.

Miss McIlveen:

I find it amazing that no consideration has been given to an alternative. There is an assumption that the Bill will go through on time.

Mr Stewart:

It would be presumptuous of us not to continue to plan according to the decisions that the Executive have already taken. The Executive and the Assembly have indicated that they wish to see the ESA established by 1 January 2010.

Mr B McCrea:

Is it fair to say that in other areas of the industrious Civil Service, contingency planning is in place for all eventualities?

Mr Stewart:

Plans for a contingency depend on the likelihood of the contingency.

The Chairperson:

I cannot remember the exact reference that was used in the correspondence. However, the date of 1 April 2010 was mentioned as an alternative if the establishment of the ESA went beyond 1 January 2010. Therefore, 1 January 2010 was not always set in stone by the Department. I think that the words used were either that it was the “intention” of both the Department and the Executive to have the ESA established by 1 April 2010 or that that was the “intended” date. The other words that the Minister used were “the aim”.

Mr Stewart:

That is correct, Chairman. The Minister was properly reflecting — as we hope we do — that one cannot take anything for granted until the Assembly takes a formal decision. Until the Bill becomes law, no one can say with absolute certainty that anything will happen on a particular date. Nevertheless, we must be mindful of the effects on staff working in the education system, because this is the most momentous step change for them in 35 years.

On the one hand, it is important that we do not anticipate the will of the Assembly; on the other, it is important that we do not cause staff unnecessary concern by painting an unnecessarily uncertain picture. It is the aim of the Executive and the Assembly to establish the ESA on 1 January 2010. We are working as hard as we can to establish that.

The Chairperson:

We are not anticipating failure; rather, we are making sure that there are no flaws. As has been pointed out, the original Bill had major difficulties, problems and mistakes. The fact that there are some 35 amendments and a raft of other amendments that the Committee may be minded to make proves that this process works, albeit sometimes it has been laborious and repetitive. However, that is the nature of the business.

Mr Stewart:

The process has been painstaking and thorough. You are right: that fact shows the strength of the process and the importance of the Department working closely with the Committee to ensure that we get the best possible Bill.

Mr O'Dowd:

People need to be careful about temporary measures. Two years ago, six commissioners were put in charge of the Southern Education and Library Board as a temporary measure; they are still in place and administering the work of the education board. They ensure that staff are paid, that education is provided and that school meals are delivered. No one wants to reach that stage across all the boards. People should not be talking about temporary measures, as, once taken, temporary measures could become permanent. The good work that we have put into the Bill and our engagement with the various sectors would be diminished. Although I have had disagreements with the Chairperson on how we should proceed, in general, I believe that the Committee has done good work on the Bill.

We have teased out stakeholders' concerns; however, we cannot allay everybody's concerns. That is the nature of politics. Sometimes, you should not meet everyone's needs. Politicians are elected to make decisions, but they cannot keep everybody happy.

We should continue to work towards establishing the ESA on 1 January 2010; that will be a

democratic process in which the Committee and the Assembly will be involved. As I said, my party has serious concerns about the establishment of temporary boards from 1 January 2010 to whenever. We could end up with a long stalemate, which will do no one any favours.

Let us go through the democratic process of engaging and putting the Bill through the Assembly with whatever amendments we have approved.

The Chairperson:

The Department's letter of 22 September 2009 comments on tax liability arising from the transfer of property and assets to the ESA. It relates to schedule 3, which deals with tax liability. The letter covers stamp duty, land tax and corporation tax. As regards corporation tax, it states:

“there is a potential for tax liabilities to arise in the other three organisations; CCEA, CCMS and the Youth Council. However, given the nature of the assets held by these organisations, combined with the low valuation of possible relief available, any potential liability appears minimal.”

It does not rule it out.

Mr Stewart:

At present, it is not ruled out absolutely, Chairman. We hope that within a matter of days, it will be completely ruled out. Unfortunately, my colleague in Her Majesty's Revenue and Customs (HMRC) who advised me on that has retired. We now liaise with his successor.

As of today, we cannot give the Committee an absolute guarantee that there is no liability; however, we strongly believe that there is not. We hope to confirm that within a matter of days.

The Chairperson:

Primarily, the matter was raised with regard to the assets and liabilities of the controlled sector, because of its nature. It retains £2.3 billion worth of estate. In a sense, the correspondence raises concerns about the assets and liabilities of CCEA, CCMA and the Youth Council. It states that:

“any potential liability appears minimal”.

I am sure that they would be very concerned that there was any potential liability.

Mr Stewart:

As would we, Chairman. We are talking about the transfer of public assets from one public authority to another. A general principle of taxation and public financing is that it really ought not to give rise to tax liabilities, and we are working to ensure that that is the case. If any action

is necessary to ensure that that is the case, we will certainly take it.

The Chairperson:

I am sorry to labour the point, Chris, but I want to be clear: if a situation arose, who would pay the bill? Who would be liable for the ownership of both the liability and the properties: the organisation or the body that would come into existence?

Mr Stewart:

If there was a liability, ownership would fall to the ESA. However, I do not want to worry the Committee unnecessarily. We have couched a letter in understated Civil Service language, and we do not think that there is a problem. Although I am 99.5% certain; until I get the other 0.5%, I am not.

The Chairperson:

Chris, this is not a criticism of you as an individual, but according to your comments to the Committee on 9 September, we have had a legal opinion on a particular issue for years; we now discover that there is a different opinion, and some of us contend that that opinion is not correct. I do not want to create a minefield for lawyers; unfortunately, however, that is the ground on which we have to tread. That raises a concern, which has been highlighted or compounded by the fact that we are now not only looking at an issue that may be an issue for the controlled sector but for other sectors as well.

The phrase “appears minimal” in relation to potential liability is why I asked who would pay the bill if there were any liability.

Mr Stewart:

Potential liability appears minimal, and I hope to reassure the Committee before the end of this Stage that it is zero.

Mr D Bradley:

I have looked at the list of attendees of meetings of the controlled schools sectoral support group, and there seems little continuity. A few people appear to have attended some but not all the meetings. What is the work programme that the group is involved in? I take it that it is an ad hoc group.

Mr Stewart:

Unfortunately, Dominic, I do not have full details of that. The Department has that information, however, and I would be happy to send it to the Committee.

Mr D Bradley:

Could we have a report of its discussions to date?

Mr Stewart:

I am sure that that is possible. I would be happy to pass that request to the group.

The Chairperson:

The Committee Clerk informs me that we have already asked for that. We should reaffirm whether we are still looking for that information.

This is not a reflection on individuals, but I am concerned about how much knowledge members of that group have about the sector for which they are to take opinions and on whose behalf they formulate policies. That is a major concern. Dominic mentioned consistency, and from examining the attendance list, I see that people have attended one meeting but not the next one. There has not been a consistent attendance. There are rumblings in the undergrowth from some people who have attended, which are beginning to permeate through to us.

Mr D Bradley:

How is the membership of the controlled sector group made up? How were its members recruited?

Mr Stewart:

At the beginning of the process, the Department attempted to kick-start it by putting together the broadest possible list that we could think of, having taken soundings from sources, including the Committee. Thereafter, it is self-selecting. The group and the sector decide who wishes to take part and who feels that they may have something to contribute.

The challenge, as the Chairperson suggested, is that whoever is involved in the group has to demonstrate to a very large and diverse sector that they are capable of representing its needs and

views and of discharging the functions that they have taken on.

Mr O’Dowd:

Is there any suggestion that anybody has been turned away from those meetings or made to feel unwelcome or that their presence or opinion was not valued?

I am happy to support the controlled sector in whatever way we can, and the establishment of any new body will always generate rumblings. However, the Committee must know whether people are being turned away or made to feel unwelcome or that their opinions are not wanted. The Committee’s concerns must be firmly based. Can the Committee even request the minutes of meetings of the working group?

The Chairperson:

The Department established it, so I assume that the Committee can seek the minutes; is that correct?

The Committee Clerk:

The Committee can certainly ask.

Mr O’Dowd:

Have we any authority? I am just teasing out our options.

The Chairperson:

We are not saying that people have been turned away. I may be accused of parochialism, but if a body were established to look at the maintained sector and people from other religious persuasions or other groups had been put on that body — people whose opinions may not be focused on that sector — concerns would be raised by the maintained sector.

The list of attendees — whether attending by invitation or self-appointment — includes people who, without devaluing the contribution that they can make, do not come from a background that suggests passion for that particular sector. There are people on the list who have that passion, and I am glad that they are there because they can make a very good contribution. I see that there are one or two principals who have been in the controlled sector for many years, so they should have a good grasp and understanding of that sector. However, the bigger problem is that the group has been set up two years later than it should have been.

Mr Stewart:

I can offer some information on that. Section 44 of the Northern Ireland Act 1998 gives the Committee considerable powers to request whatever information it wishes, but it may not want to use such a sledgehammer in this case.

The Department will endeavour to provide as much information to the Committee as it can about the operation of the working group, but I stress that the group was not established or run by the Department. The Department is there in a consulting and advisory capacity. It recognises the need to take that role, because, unlike the other sectors, the controlled sector is at much earlier stage of evolution in the process and may have a much greater need than other sectors for the Department's help, support and guidance.

To illustrate what happens: on the day that the working group meets, Department officials will be there, but they leave the room for the greater part of the meeting. They are not present while the group conducts its business, unless the group asks them to come forward to assist it, in much the same way as we do with the Committee.

Committee members' concerns might be best addressed by, in due course, inviting members of the working group to deliver a presentation on the work that they are doing and the stage that they have reached. They may be able to answer the Committee's questions more convincingly than I can, simply because they are directly involved in the process and I am not.

Miss McIlveen:

Much of what I was going to ask has been answered. However, does the group have terms of reference, a secretariat and a chairperson?

Mr Stewart:

The acting chairperson is Hugh McCarthy, the Principal of Killicomaine Junior High School, and the Department has been providing a secretariat because the group does not have its own and there is no alternative. Aside from someone taking minutes being in the room, the Department does not take part in the meeting.

Miss McIlveen:

Were the terms of reference established at the outset?

Mr Stewart:

I believe that the group itself drew up its terms of reference in its first or second meeting.

Miss McIlveen:

The difficulty shared by members is the fact that it has taken so long to establish the group, which leaves it to catch up on a considerable amount of time. The membership appears random and attendance is very ad hoc. Those are initial observations from the first few meetings, but they raise questions about the dedication of many of those involved.

Mr Stewart:

All those points are perfectly fair. I will not try to put words in the mouths or the minds of those who attend, but because it is a new approach and a new initiative, I am sure that many people have come along with great enthusiasm and all have attended with considerable dedication. Others have come with curiosity and wonder whether they feel that it is appropriate and something in which they wish to play a direct role. Perhaps it will take one or two meetings for people to come to their own conclusions.

The Chairperson:

Who has their hand on the tiller of this vessel? Perhaps it is a ship that is away out at sea that everybody hopes will find a port or destination at some stage. People can get on if they want, but we are not that worried if they do not want to. That concerns me because we are talking about a sector that educates 98% of the Protestant children in Northern Ireland.

Mr Stewart:

I do not think that we could be as neutral on the matter as your question implies because we would be as concerned as you if we thought that the group could fail. It is very important that the controlled sector has an effective representative body. However, I think that the Committee would be equally concerned if it received reports from the sector that stated that the Department's heavy hand was all over the group and that the Department was dictating and demanding that it went in a particular direction or went about its work in a particular way. The Department does not do that with other sectors.

We are there to assist and guide. Certainly, if we think that something is going seriously wrong, we will not be slow to tell the working group of our view. However, that does not mean that it has to slavishly follow every piece of advice that the Department offers or that it will agree with everything that we say; it is quite the reverse. One of the measures of the success of this exercise is that there will be a strong and effective body that feels that it has the capacity to argue with the Department about the future direction of education. If it were not so, I do not think that the body would be effective.

Miss McIlveen:

What bothers me is the fact that there has not been any real progress. The letter from the Minister that was given to the Committee today implies that C na G is so forward-looking that the Minister is contemplating further amendments on behalf of that sector, yet the controlled sector does not even have a body. That is what really bothers me.

Mr B McCrea:

The membership list that we received does not appear to include any people from west of the Bann, apart from the Foyle women's group. There appears to be at least one councillor who, to my knowledge, sits only on the boards of Catholic maintained schools. No principals of non-grammar controlled schools are represented on the body. There are also some concerns about the way in which the meetings were called. The first meeting was on the last day of school, so there might have been some difficulty in getting people to attend, and then the next meeting was held on near enough the first day of school. The people who we are trying to attract are busy, so the timing is all wrong.

Chris, although you said that the Department was taking a hands-off approach and that you would tell the Committee if you thought that things were not quite going to plan, I am concerned that we are not really anywhere with that body. The needs of the controlled sector must be addressed if we are to address the needs of all the other sectoral interests. I do not think that it is working.

Mr Stewart:

I do not think that the group would share your view, and its view is perhaps more important than mine in that regard. As I have said, we are not in a position to police the membership. We are

certainly not in the business of turning away anyone who turns up. If there are gaps, we will certainly pass on those concerns to the group, but the issue is for it to address.

You are absolutely right: the timing of the first meeting was poor. I do not think that we could have picked a worse date for school principals than the last day of term. One or two of them made that point to us quite forcefully. However, the second and subsequent dates were chosen by the group. We asked what it thought would be a suitable date for the second meeting, and that date was identified by the group, including by the school principals.

Mr B McCrea:

When you spoke about the controlled sector, my immediate response was to think not of controlled grammar schools but secondary modern schools, or whatever you wish to call them. The fundamental point is that the principals of those types of schools are not represented on the group. I am sorry to say, Chris, but the emperor has no clothes. The people who will be affected most are not in the group.

I suspect that some of the grammar school principals are considering joining the Governing Bodies Association (GBA) or another voluntary organisation. There are not enough people in the group who can represent the sector about which we are concerned. Those on the group will not be able to carry that sector. Although I am grateful to all the people who turned up, it was a case of omission rather than of rejection. We need to get more representatives from the controlled sector. If we do not do that, I am afraid that the needs of the controlled sector will not be addressed.

Mr Stewart:

With the greatest respect, it is a bit early to conclude that the membership is not representative. Without asking the individuals concerned, none of us can say why certain people were or were not present at a particular meeting. As you rightly stressed, school principals are busy people, and they cannot, therefore, come along to every meeting.

At the first meeting at which I was present, there were principals from non-grammar schools and secondary schools, and a principal from a controlled school. The latter might not have been present at subsequent meetings for reasons I do not know. Your general point is correct: the group must represent all the various parts of a very diverse sector. That is a challenge for the

group and is not something that the Department can dictate.

Mrs M Bradley:

I was about to mention the representation west of the Bann, but Basil beat me to it. I am concerned about the lack of representation from the Western Education and Library Board (WELB) area. I recognise only one name on the list, and she is not an educationalist. I am not condemning that woman — in fact, I know her very well, and I would not do that. I think that people who work in controlled schools in Derry would have been keen to be part of the group. However, I do not know whether they applied. I am concerned that the WELB area does not seem to be represented at all.

Mr Stewart:

I must stress again that no one was excluded and no one had to apply to attend. People who wish to attend the meetings and get involved are very welcome.

The Chairperson:

In fairness, that is not the best way to do it. Surely the onus is on the Department to appoint an interim manager while the new body is being set up. We do not even know who chairs the group. How is that decided? Is it a case of throwing all the names into a hat on the day of the meeting and picking out the name of one person to chair that meeting, and then repeating the process at the next meeting? The approach seems scattergun. It gives the impression that the controlled sector does not matter, even though it owns £2.3 billion of the estate and caters for the greater percentage of Protestant children.

That was not the case when we dealt with the other sectors over the summer. They battered on the door and brought about change, and there are different reasons for that. I concur with Basil's point: it just gives the impression that the sector is not at the game. The controlled sector is at the heart of everything that goes on in the community. I think that the Department has abdicated responsibility, washed its hands clean and thought that if it works, it works and if it does not, it does not. That is the wrong attitude.

Last week, we saw the Department's attitude towards another sector. The Department took the view that if the GBA was not going to talk to it, it was not going to talk to the GBA. Then we received a letter from the Minister stating:

“Members are already aware that I have arranged to meet the GBA this week, and I am pleased to say that, following the Committee meeting, the GBA has also requested a meeting with officials.”

I believe that that meeting is taking place today. That shows the Department’s attitude, which is “We will take the ball off the pitch. We will decide what we are doing, and if anyone wants to talk to us, the door is open, come to see us.”

Mr Stewart:

You made a number of points to which I ought to respond. I understand your points. However, with respect to you and the Committee, I think that you are being a little unfair on the group and, perhaps, on the Department, too. The group is not as ad hoc as your question might imply. It has a chairperson, who is chosen from among its members. It has adopted a committee structure, which it has chosen itself.

The Chairperson:

Who is the chairperson of the group?

Mr Stewart:

It is Hugh McCarthy.

The group has adopted a working plan and a committee structure, and, given the fact that it has been going for only a short time, it has made encouraging progress, and it continues to do so.

On the point about the GBA, as I said last week, there is no question of the Department taking the ball off the pitch. We have never refused to meet any stakeholder or to accommodate any stakeholder’s wish for dialogue. The GBA was asked by the Committee whether it was prepared to meet the Department, and it declined to do so. Subsequent to that meeting, a member of my staff wrote to the GBA and asked again for a meeting, and they received a reply turning it down. That reply expressed the organisation’s view that it did not see any value in having dialogue with the Department. There is a limit to the number of times that we can ask the GBA for a meeting, and we certainly cannot force it into meeting us.

When I returned to the office after last week’s meeting with the Committee, I was pleased to find a request from the GBA for a meeting. I do not know what prompted its change of heart; perhaps it had been listening to the Committee’s debate. We welcome that request. As I said at

last week's meeting, the Minister already had plans to meet the GBA. That meeting is taking place today. We are pleased to see that it is prepared to resume dialogue with officials, and that dialogue is under way. If the ball was ever off the pitch, it was not at the Department's behest. Perhaps more importantly, I assure you that the ball is back on the pitch.

The Chairperson:

As a Calvinist, I can say that you got that request because of confidential circumstances.

Mrs M Bradley:

Should it have been ensured that all the board areas were well represented on the group?

Mr Stewart:

We will certainly welcome any assistance that Committee members will give us on that. When the original list was drawn up, it included all the names that were suggested by Committee members. If you wish to suggest other names, we will be happy to put those forward.

Mr Lunn:

How many people were invited to join the body? The average attendance seems to be 15 or 16. How many are entitled to be there?

We have asked for the minutes of the meetings, and I do not know whether we can get them. I know that only three meetings have taken place, but has the body put any identifiable product back to the Department for consideration?

People are concerned about the sector being properly represented, and there are various concerns about geographical considerations. Someone said that at least one person is listed as being an attendee who does not have a direct interest in the controlled sector and who might even have an direct interest in the maintained sector. That would be a good thing, because the body could perhaps learn something from the perceived success of the other sector in some areas. If he or she wishes to contribute to the body, fair play to them.

Mr Stewart:

I certainly concur with that point; that would be a great advantage. The people on the group recognise that they can learn from the experience of some of the other sectors. Those from the

maintained sector would say that it is perceived to be a successful sector and that the Council for Catholic Maintained Schools (CCMS) is perceived to be an effective organisation, but it was not always that way, even in the maintained sector. CCMS mentioned that when it gave evidence. That organisation would say quite openly that it took it a period of time to build up its capacity in the sector and to build up the trust and confidence of its own sector to do a job.

Bearing in mind the points that members have rightly made about the controlled sector being behind some of the other sectors, we want to accelerate the process as best we can. If, as part of that, the controlled sector could learn lessons and draw on the experience of other sectors that have trodden the path before them, that would be a good thing.

Mr Lunn:

What product has come out of the group?

Mr Stewart:

There is product in the sense that there are minutes of meetings and that the group has a work plan. I cannot say that they have signed off particular products, such as a constitution or a business case. I do not think that the group is at that stage yet. However, perhaps sensibly, the first thing that the group has done is to scope the task, and it is now engaged in taking that forward.

Mr Lunn:

How many people were invited to join the body?

Mr Stewart:

I would have to check that information and come back to you. I think that the original list of invitations may have contained around 40 or 50 names, although not that many people turned up on the first day, largely because we picked a daft day for the first meeting. Attendance at the second meeting was better.

The Chairperson:

I want to conclude this line of questioning so that we can move on.

Mr O’Dowd:

If memory serves me right, on several occasions before summer recess, departmental officials, including Chris, asked Committee members if we had any names that we thought should be included on the invitation list. If any member suggested names and those people were not invited to the group’s meeting, that would be a matter of concern. It has been indicated that, so far, no one has been turned away.

Another aspect that I found interesting is that certain parties here have lobbied, quite correctly, for a sectoral support body for the controlled sector, because there was a demand for that in the sector. It appears from the attendance thus far that there has been a muted response from that sector. If the demand was as high as some people in this room tell me it is, I would have expected people to be kicking the door down to get in. That does not seem to be the case.

If the Department has gone about this the wrong way or made errors in the invites that it sent out, that must be corrected. If the Department can support the group, it must do so in a professional manner. However, I get the impression that some members want the controlled sectoral support body to be a subcommittee of this Committee. That is not what any of the sectoral support bodies are about. They need to be free-standing and independent-thinking. They need to lobby for their sector and have an advocacy role. There is no point in having a subcommittee of this Committee.

To return to my original point; if any member put forward names of people who they felt should be invited to the first meeting and those people were not invited, that situation should be rectified. The debate today has opened questions in my mind about how much of a demand there is in the controlled sector for this body.

The Chairperson:

I think that that is more of a reflection of the way in which the controlled sector has conducted its business. It is more interested in the job that it is doing, rather than a preservation of a particular structure or ethos. Other sectors can become so embroiled in their ethos or structures that they become more important than the business that they are about. It is like comparing apples with oranges. It is a matter of how particular sectors view themselves. That is why a huge amount of work needs to be done with the controlled sector, because it has had to be inclusive. Controlled schools have not had the luxury of saying that they will accept only certain children. That sector

is the real integrated sector of education in Northern Ireland, but it has never been given the opportunity to have that reflected in how it carries out its business.

I ask Mr McCrea to ask his question, and then we must conclude this discussion. If we continue at this rate, members will be here until the same time as they were last night. Members, the choice is yours; the matter is entirely in your hands. I can only guide and direct, but if members want to arrive home late two nights in a row, that is fine. They can text home to say that they will be late again tonight.

Mr B McCrea:

I take your point, Chairperson. It may be that we have to put the discussion of the sector on the agenda, because what John has just said shows that there is a profound misunderstanding of why we have to deal with the issue. My response to Trevor's point will be the same as my response to John's. In certain other sectors, there are people who are highly focused and highly organised. They, quite rightly, have their own agenda, and they know where they are going. Notably, the Catholic maintained sector was able to amalgamate and reorganise its schools to get a particular level of pupils. The controlled sector refused, was unable to, or could not come together. As a result, when decisions were eventually being considered under the Bain proposals, there was one large, well-organised Catholic maintained school and two or three small controlled schools. Those schools would, therefore, fall foul of the efficiency issues.

The difficulty that arises when trying to organise the controlled sector is that it is so diverse and operates in such a huge range of areas that it does not have a common position on many matters. The fundamental problem is that the sector will end up being squeezed by other sectoral bodies if it does not organise itself.

I will finish on the issue of whether people from other sectors should be involved in the sectoral group for the controlled sector. One could say that we should accept views from outside and learn lessons from others people's experience, but, as the Chairperson pointed out, it would be strange if the Council for Catholic Maintained Schools was dominated by people from outside the sector. Equally, I note in the letter from the Irish-medium schools to the Minister that they are concerned that school governors maintain the ethos of their schools. That is reasonable. The point that I am making is that the controlled sector is really large and educates a lot of our young people, but, for historic reasons, it is not able to compete with its sectoral counterparts. We are

trying to find a solution to that problem.

I suggest that the problems facing the controlled sector be put on the agenda. Chris uses the phrase “with respect”, and we are being nice and friendly with each other today, but, in my opinion, this group will not resolve the problems that we have with the controlled sector, no matter how hard the individuals work.

The Chairperson:

Chris, could you convey back to the group our suggestion that it would be helpful see either the chairperson of boards of governors or parent governors from the sector among its membership. We know that members of the Transferor Representatives’ Council (TRC) are on the group, as are principals from controlled schools. Concerns have been raised, and the Committee will urgently return to the issue.

We now begin our clause-by-clause scrutiny of the Education Bill. Before we proceed, I will try to ensure that Committee members have in front of them the appropriate documents so that we can make this process as seamless as possible. I know that you have struggled with me as the Chairperson, and I apologise for my inadequacies, but I have struggled with the process as much as you have. Let us try to set the scene.

Destination is lunch for 1.00 pm; how we get there is entirely in your hands.

The Department has proposed amendments on its own behalf and at the request of the Department for Employment and Learning. Those are set out in the document in the relevant clauses as proposed departmental amendments. The Education Bill amendments are in the document before us.

At last week’s meeting, the Committee agreed and instructed the Clerk to prepare draft Committee amendments, which the Committee may wish to consider, on clauses on which some members canvassed the possibility of amendments during the Committee’s scrutiny of the Bill. Those are listed in the document as Committee amendments — if appropriate. If the Committee wants to recommend amendments in those areas to the Assembly, we will have draft wording before us today and the Committee can take a decision on them.

Additional documents are available. At tab 4, item 1, there is a copy of the Minister's response of 16 September to the Committee's letter of 9 September, which included the issues of ESA membership, representative membership, and local committees. At tab 4, item 2, there is a copy of the Department of Education's amendments. That table is useful because members will recall that the way that it is set out gives us —

Mr B McCrea:

Mervyn, you lost me about 30 minutes ago.

The Chairperson:

We are looking at tab 4 in the black folder. There is a document entitled 'Education Bill Amendments'. Following that, there is a response from the Minister, which is useful information to have in front of you.

Mr B McCrea:

Is that the letter dated 16 September?

The Chairperson:

Yes. Then there is the letter that deals with outstanding responses. Then there is tab 2.

The Committee Clerk:

Tab 2 is a very useful document because it outlines an explanation of the numerous departmental amendments.

Mr B McCrea:

What is in the white folder?

Mr O'Dowd:

Just follow my lead, Basil. If I agree with something, you go with it. *[Laughter.]*

The Chairperson:

Follow my nod.

Mr B McCrea:

Go easy on me, John.

The Chairperson:

Tab 2 — that is it. We are getting there.

Mr McCallister:

You told us that yesterday, John.

The Chairperson:

The two documents that you need to have in front of you are the 'Education Bill Amendments' — exhibit a — and tab 2, or exhibit b, and, of course, the Bill.

OK. I believe that that is all that we need. Chris, I ask you to take a place in the public gallery. Patricia Casey, from the Bill Office, is present to advise us on any technical issues that need to be addressed. You are very welcome, Patricia. I apologise that I did not welcome you earlier.

I refer members to the Education Bill amendment document. I remind you of the procedure in the Committee Clerk's note. It advises that in relation to each clause and schedule where there is no proposal to amend, the Committee will state whether it is content with the clause or schedule as drafted.

Where an amendment is proposed by the Minister of Education, the Committee will decide whether it is content with the amendment that is proposed. Depending on whether the Committee is content with the amendment, it will indicate either that it recommends to the Assembly that the clause be amended as proposed by the Minister — or, if applicable, as proposed by the Committee — or that it does not recommend an amendment. In that case, the Committee would indicate that it is content with the clause as drafted.

Are members content that we proceed? Are there any questions before we begin our clause-by-clause, schedule-by-schedule scrutiny of the Bill?

Mr B McCrea:

I want to make a brief statement for the record. The Ulster Unionist Party will attempt to be as constructive as possible in the clause-by-clause scrutiny. It does not wish to be seen to be trying to block the creation of the ESA as a streamlined oversight body.

We will not, however, agree to the Minister's proposals for a highly centralised, bureaucratic body that undermines the autonomy of boards of governors and sectoral representatives. With that caveat, we will try to perform a constructive role in the clause-by-clause scrutiny of the Bill.

The Chairperson:

OK. If there are no further comments, we shall proceed to clause 1.

Clause 1 agreed to.

Schedule 1 (The Education and Skills Authority)

The Chairperson:

Members, on this occasion only we will proceed not to the next clause but to schedule 1; we must deal with it before we can proceed to clause 2. The first decision is the number of members of the education and skills authority (ESA). The Minister proposes that schedule 1 be amended as follows: In page 31, line 15 leave out "7 or more than 11" and insert "11 or more than 14".

If any member wants to propose a higher number, a Committee amendment has been drafted to that effect. We would take a decision on that amendment first. If the Committee decides to recommend a higher range than that which the Minister proposes, the Committee will not consider the Minister's amendment or the existing wording of the Bill.

If a member proposes a higher range than 11 to 14 members, the Committee's amendment will be to leave out, "7 or more than 11" and to insert the proposed new number.

Mr D Bradley:

Should that read "or no more than"?

The Chairperson:

Sorry, it should be "no more". Therefore the question is —

Mr B McCrea:

No, you are correct.

The Chairperson:

It is not “fewer”; so the question is that the Committee recommends to the Assembly that paragraph 2(1)(b) of schedule 1 be amended as the Minister proposes. Members must decide whether they accept the Minister’s amendment to increase membership to 14 or increase that number again.

Mr Lunn:

I am content with the Minister’s amendment.

The Chairperson:

Are there any other proposals?

Mr D Bradley:

I would like a higher number.

The Chairperson:

Do you have a number in mind?

Mr D Bradley:

I propose “no fewer than 15 and no more than 20”.

The Chairperson:

I have a proposal from Dominic that membership should be 15 to 20. That is seconded by Basil McCrea. I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: In page 31, line 15 leave out “7 or more than 11” and insert “no fewer than 15 and no more than 20”.

Question put,

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

NOES

Mr O'Dowd, Mrs O'Neill.

Question accordingly agreed to.

Mr Lunn:

If the Committee wants to suggest a further amendment to schedule 1, must that be done at a different stage?

The Chairperson:

Yes; that would be a party amendment or a Member's amendment at Consideration Stage in the House. Is that correct, Clerk?

The Committee Clerk:

It is open to a member to raise an issue now on a further part of that schedule, but the main areas of discussion have been identified in the document being considered by the Committee.

Mr Lunn:

The amendment that we have just accepted would mean that there would be 11 councillors on the ESA. Now may not be the time to raise it, but I intend to propose an amendment at Consideration Stage to amend that. Is it appropriate to suggest an amendment now that the Committee might adopt?

The Chairperson:

Trevor, you are entitled to propose an amendment; it is up to the Committee to second and approve it. If that attempt is unsuccessful, you can still table it for Consideration Stage in the House.

Mr Lunn:

I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: In page 31, line 19, leave out

“that at any time a majority of members are councillors (within the meaning of the Local Government Act (Northern Ireland) 1972 (c.9)” and insert “at any time one third of members should be councillors (within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9)”

The Chairperson:

Members have a proposal from Mr Lunn. Does anybody second it? Nobody seconds the proposal; therefore, it falls. However, it has been recorded.

The Committee Clerk:

The proposal must be put to a vote to allow members to indicate that they are against it.

Mr O’Dowd:

It was not seconded.

The Chairperson:

It was not seconded.

The Committee Clerk:

It does not need to be seconded. If a member proposes an amendment, it can be put to a vote.

Mr B McCrea:

Before you do that, I am not averse to the amendment, but it has come as a bit of a shock, and I have not had a chance to consider it. I do not want to be recorded as voting against it because there may be some merit in it, but it has only come to me now so I cannot make a judgment.

The Chairperson:

John, can you clarify the position?

The Committee Clerk:

The Committee could agree that it noted Mr Lunn’s amendment, whether or not it wishes to bring forward a Committee amendment to put it into effect today. It depends on whether a majority of members would support Mr Lunn’s amendment. If not, that should be recorded now, and Mr Lunn can then raise it, from his party’s point of view, as a Committee amendment.

The Chairperson:

OK, we are clear on that. It can be noted by the Committee, or members can vote on Trevor's proposal.

The Committee Clerk:

The effect would be to remove "majority" and replace it with "one third". If members wish to consider voting on that now, that is open to the Committee.

The Chairperson:

OK, members, those are the only two options: either to note the amendment or to vote on it.

Mr O'Dowd:

For the record, Sinn Féin would be opposed to that amendment. How will that be known if we do not vote against it?

The Chairperson:

I will put it to the Committee that there is a proposal that "one third" replace "majority" so that it reads:

"at any time one third of members".

Is that correct?

Mr Lunn:

Yes. I would be content for the Committee simply to note the fact that I have proposed the amendment rather than force a vote. Basil is right that I have pulled it out of the blue, although everyone had probably seen it coming in some form or other after the past 18 months. I am content to have it noted.

The Committee Clerk:

The question is, as I said earlier, whether the Committee wants to bring forward for consideration in early October an amendment that would go before the Committee when the detailed wording has been worked out, although that amendment would not be in the Committee's report. Members would then have time to reflect before it was brought forward. In that case, members should indicate whether they vote yes or no to that proposal.

The Chairperson:

I am not clear what was said there. We have these amendments, as well as a report to produce for the House; therefore we have to make a decision. We have no more time in which to consider any amendments after today.

The Committee Clerk:

That is right, but the report can state that the Committee noted a proposal from a member this morning —

The Chairperson:

Yes, but that is a different thing.

The Committee Clerk:

— and that the Committee agreed, by majority, to draft an amendment that would be considered after the report had been issued. It is possible to do that.

The Chairperson:

How can we draft an amendment if we conclude our consideration of amendments now and the report goes before the House? Surely all we can do is note that a concern was raised that “majority” should be replaced with “one third”. From what I see, there will not be support for Trevor’s proposal.

The Clerk of Bills:

There is another option. As well as recommending the wording of an amendment and agreeing it today, the Committee could recommend to the House that it agreed an amendment to say such and such, but that the wording has not been agreed. I think that that is the point that the Committee Clerk is trying to make. It is not ideal; obviously it would be preferable to agree the wording of the amendments today, but as the proposal was made only today, members may need more time to discuss it. The fall-back option is to agree to bring forward an amendment on that basis, but not to agree the wording of it today, because there is no time. That would be stated in the report, and the Chairperson could address it when briefing the House at Consideration Stage. That is an option.

Mr D Bradley:

Can parties table amendments during Consideration Stage?

The Clerk of Bills:

Yes. Up to 9.30 am on the Thursday before Consideration Stage, whenever the Minister brings that forward, any Member, Committee or the Minister can table an amendment. Members may wonder how they would find out about that if the report had already been printed. The Bill Office will issue a notice of amendment for any amendment that is brought forward, and that will appear in Members' pigeon holes. The Marshalled List, which is the final list, is published after 9.30 am on the last Thursday before Consideration Stage. Chairperson, you are correct to want to agree as much as possible today, but if members do not have the wording of an amendment or have not thought it through, they can use that system as a fall-back.

The Chairperson:

The proposal is for an amendment to remove "majority" and replace it with "a third". Is the Committee minded to consider such an amendment?

Mr Craig:

I would have huge difficulty with such an amendment. I do not like bodies that are not democratically accountable, and I really do not like outside bodies that do not have a majority of elected members. The amendment would create a democratic deficit. For 30 years, Northern Ireland was run with a democratic deficit, and that must change. I do not see the rationale for the amendment. I am totally opposed to it.

The Committee Clerk:

If the Committee were to decide by a majority vote that it wished to return to the amendment in early October, the amendment could be put on that day. On that Wednesday in October, the Committee may reject the amendment, and it would be left to Mr Lunn to decide whether he wished to table it on behalf of the Alliance Party. The Committee is to decide now whether it wishes to note the amendment from Mr Lunn and whether to put it down for further consideration after the Committee's report has been issued. The amendment will be decided on that day.

The Chairperson:

Do Members wish to note the amendment in the terms that the Committee Clerk outlined?

Question put.

The Committee divided: Ayes 1; Noes 8.

AYES

Mr Lunn

NOES

Mr D Bradley, Mrs M Bradley, Mr Craig, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

The Chairperson:

John McCallister and Basil McCrea have abstained.

Question accordingly negatived.

Mr Lunn:

For the record, does that mean that the amendment will not be noted formally but that it will appear in the record of today's meeting?

The Committee Clerk:

Yes; the vote on it will be recorded, but the amendment was not agreed.

The Chairperson:

Members will recall the Committee's discussions on how the ESA membership could be made representative and the request to the Minister to consider an amendment to paragraph 2(2) of schedule 1. The Minister is not minded to propose an amendment to that part of the Bill, and we have a draft wording if Members wish to consider a Committee amendment.

Mr D Bradley:

I would accept the Committee amendment if the word "proportionately" were inserted before "representative". The amendment would then read:

"and:

(c) that the members, as a group, are proportionately representative of the community in Northern Ireland".

The Clerk of Bills:

That would make it a completely different amendment; that wording is much more precise. The Bill has been drafted in keeping with a provision in the Northern Ireland Act 1998. The Committee has received legal advice on the meaning of the phrase "representative of the people

of Northern Ireland” and its various aspects. Adding the word “proportionately” would be a completely different matter.

Members also need to consider the amendment in the context of the wording of the schedule, “so far as practicable to secure”. Members should take into consideration the difference between “so far as practicable” and “proportionately representative”, which suggests a precise number.

The Chairperson:

Dominic, why would “proportionately” give the result that you desire? I assume that your desired outcome is that the education and skills authority is democratically or electorally representative of Northern Ireland.

Mr D Bradley:

Yes, I would like the ESA’s membership to reflect accurately the various political communities in Northern Ireland.

The Committee Clerk:

There is an option of considering an amendment to paragraph 2(2) of schedule 1, which the Committee discussed following advice about the definition of the phrase:

“representative of the community of Northern Ireland”.

The Chairperson:

Would that wording define the phrase?

The Committee Clerk:

Yes.

The Chairperson:

That would give the same outcome. We are working on the assumption that the Committee would approve that, but we do not know because it has not yet been put it to the Committee. Do members have views on that?

Dominic would prefer the word “proportionately” qualifying “representative”. Members have heard the comments from Patricia and John; are there any other views? Defining

“proportionately” could create legal difficulties.

The Clerk of Bills:

In order to effect that, you may need further amendments to define what is meant by “proportionately”.

Mr Lunn:

That is more or less what I was going to say. It could not be left as a one-word amendment; it would have to be developed. If I heard Dominic correctly, he wants political and religious proportionate representation of the membership. The proposed Committee amendment to paragraph 2(2) of schedule 1 does not refer to either of those things; it refers only to skills and geography. The term “a broad geographical range” appears. I do not think that that gets us over the hurdle.

Mr D Bradley:

If the majority of members of the board are to be councillors, I would like that body of councillors to be proportionately representative of political opinion in Northern Ireland.

The Chairperson:

The Minister’s intention has been that those members would be appointed on merit, not on proportional representation of the community that they serve.

The Committee Clerk:

If the majority of the Committee wants that to be considered, we could treat it in the same way as the previous proposal. We could note the proposal and bring it back to Committee after advice about the implications of such words being included. It is a question of whether the Committee is minded, at this point, to accept the current wording. If the majority of the Committee wishes, it could be amended later to include the word “proportionately”. However, we would have to get legal advice, which would be available some time in October, after the Committee’s report has been published. Of course, the point that was raised would be noted in the report.

Mr O’Dowd:

Dominic’s proposal should have been made much earlier than now so that there could have been a discussion about it and questions around the legal context and everything else. To throw it in

now causes major difficulties in trying to assess it.

I have a question about the Committee's proposed amendment to paragraph 2(2) of schedule 1, which proposes that members of the ESA, as a group, be representative of the community in Northern Ireland. Does that rule out people from England, Scotland, Wales and the Twenty-six Counties? What about the European context? It may be off the wall to suggest that people will come over for board meetings for which they will receive £8,000 each year, but is it legally competent to include such an amendment? It could rule out people from other places.

The Clerk of Bills:

There would need to be some consideration of the equality implications of including that wording in relation to introducing a political element.

The Chairperson:

Of what element? Of the element to which Dominic referred, or to —

The Clerk of Bills:

The "proportionately" element.

The Chairperson:

What about the other comment that was made about defining the phrase "representative of the community in Northern Ireland"?

The Committee Clerk:

The proposed Committee amendment to paragraph 22 of schedule 1 tries to define precisely what is meant by "representative of the community in Northern Ireland".

Mr O'Dowd:

We are talking about a management body. People will be asked to join the board of a management body of a publicly funded organisation. Does that wording rule out people from England, Scotland, Wales and the Twenty-six Counties, and is that legal? If it is legal, I have no argument, but we need to check that out.

The Committee Clerk:

It is a legal point. We can check that out if members wish us to do so. Any legal advice would not be available for the Committee's deliberation before the publication of the report. It would be available post-report, as I have said. It is a matter of whether members are prepared to look at the proposed amendment to paragraph 2(2) of schedule 1, bearing in mind the reservations.

The Chairperson:

Did you propose that, Dominic?

Mr D Bradley:

Yes.

The Chairperson:

Do I have to put that proposal to the Committee?

The Committee Clerk:

Yes.

The Chairperson:

Is there someone to second it?

The Committee Clerk:

It is a matter of whether the Committee wants to take that to a vote.

Mr D Bradley:

If there are legal implications to what I proposed, I am happy to wait until October, so that the Committee has had the chance to be briefed and informed about those legal implications.

The Chairperson:

If I am right about this, we would then request clarification of the legal competency of an amendment that is worded: "that the members, as a group, are proportionately representative of the community in Northern Ireland". John wants clarification of whether that excludes anybody outside of Northern Ireland. Does that mean that we are not content with paragraph 2(2) of schedule 1 as drafted? That is the decision that we must make, because it was only a Committee amendment.

The Committee Clerk:

The Committee can make a decision on the schedule as drafted if it wants to. The further amendments could be considered after we receive legal advice in early October.

The Chairperson:

We cannot include that amendment in our report because of the printing deadline, but that does not prevent the Committee from bringing forward such an amendment before the Consideration Stage.

The Committee Clerk:

The Committee can, if it wishes, further amend the amendment in early October — providing the amendment is accepted now — to insert the word “proportionately”, or it can change paragraph 22. It would be noted in the report that an issue was raised and that the Committee would be returning to it. Whether that manifests itself in a further amendment is a decision for the Committee in October, in light of advice that it receives.

The Chairperson:

In light of that, the Committee is not content with paragraph 2(2) of schedule 1 as drafted, because it is asking for an amendment to be considered. Surely, that is the logical conclusion.

Mr Lunn:

We have not accepted or voted on the original amendment in the first place.

The Chairperson:

That is what I am saying. However, we have had a discussion and, although it has not been put to a vote, it seems that there is agreement among members that we should receive clarification on the legal competency of a possible amendment, which would read; “the members, as a group, are proportionately representative of the community in Northern Ireland.” That advice will take into account the issue of proportionality and the issues raised by John O’Dowd about whether that excludes anybody from outside Northern Ireland.

Mr Lunn:

Surely we are going to have to vote on everything today, so we must vote on the original

amendment.

The Chairperson:

That is why I am saying; we are either content or we are not. All I am trying to say is that the Committee cannot say that it is content when it is getting clarification on the legal competency of an amendment. Logic follows on some of these things. My advice is that the Committee registers that it is not content but adds a caveat that we are getting clarification on the amendment, as we have discussed.

Mr B McCrea:

I would have thought that we are content with the amendment as drafted, subject to —

Mr Ross:

We cannot be content with the schedule as drafted in the Bill if we are considering an amendment. We have to decide whether we are content with it as drafted. Well, no, we are not, because we are considering an amendment.

The Chairperson:

That is the Question. I put it to the Committee: is the Committee content with paragraph 2(2) of schedule 1 as drafted?

Mr O'Dowd:

We will just abstain. It will save a lot of hassle.

The Chairperson:

So you register that. It has to go to a vote then. So we are not content?

Question put.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Lunn, Mr Ross, Mr Storey.

The Chairperson:

I note that John O’Dowd and Michelle O’Neill have abstained. We are still on paragraph 7 of schedule 1.

Mr B McCrea:

Are we not voting on that amendment then?

The Chairperson:

No; we cannot vote on it until we receive the relevant legal advice.

Mr B McCrea:

Although we may want to amend the amendment, would we not be better to say — because we want it on the record — that we at least want a board that is representative of the community. I would like that to be included in the report. I am quite happy to amend it subsequently if we get different advice.

The Chairperson:

That means that we make a decision, and the Question is then whether the Committee agrees its intention to bring forward a Committee amendment or amendments to paragraph 2(2). It is only an intention to bring forward an amendment.

Mr B McCrea:

As long as it is in the report, I am happy.

Mr O’Dowd:

Have we not just voted and made a decision?

Mr B McCrea:

I thought that there was a series of decisions. First, you decide if you are happy; then you decide if there is an amendment.

The Chairperson:

Basil, it complicates the situation. We have agreed that we are not content.

Mr B McCrea:

I will make life easy; if you are happy, I am happy.

The Chairperson:

The Committee will receive legal advice on the proposed Committee amendment that the ESA members, as a group, are proportionally representative of the community in Northern Ireland. Then we can make a decision.

Mr Lunn:

Chairman, you made it very clear last week that today was D-Day, and we have to either accept or reject each of the amendments, no matter where they come from. The Committee has to take a view on them. However, that does not appear to rule out that Committee expressing some reservations and coming back to it from a legal standpoint. It does seem a bit odd that we are now turning down our own amendments.

The Chairperson:

In fairness, that is only because it was introduced now as opposed to last week or six weeks ago.

Mr Lunn:

We are going to come up against this a lot of times.

The Chairperson:

Yes; it is going to make it a very long day.

Mr Lunn:

You were adamant about your instructions last week. I was not sure at the time whether you were simply laying down ground rules to make us concentrate —

The Chairperson:

I think that I was.

Mr Lunn:

— or whether it was a legal requirement that we had to take a firm decision.

The Chairperson:

What it proves, Trevor, is that it fell on deaf ears. All right; happy enough with that?

Mr Lunn:

All right; yes.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: in page 33, paragraph 7, line 7, after ‘may’ insert

‘to the extent that the Department may by regulations provide,’

In page 33, paragraph 7, line 8, insert new sub-clause (2) as set out below and re-number existing sub-clauses (2) and (3) accordingly

‘(2) Regulations made under sub- paragraph (1) shall include those functions which may be exercised by each committee.’

In page 33, paragraph 8, line 20, after ‘*under*’ insert: ‘*paragraph 7 and*’

The Committee will recall that it also raised with the Minister the option of an enabling provision for regulations on the ESA committees, in the light of the concerns of some members and key stakeholders about local committees. The Minister’s letter of 22 September 2009 makes it clear that she does “not propose to make regulations”. The Committee agreed in principle that it needs clarity, certainty and confidence — those are the three words that were used repeatedly — on this matter. The Committee amendment would place a duty on the Department in so far as it proposes to add the words:

“to the extent that the Department may by regulations provide,”

The issue was that the regulations were required to give that clarity, certainty and confidence.

At schedule 1, page 33, paragraph 7, line 8 we would insert a new sub-clause (2) that would read:

“Regulations made under sub-paragraph (1) shall include those functions which may be exercised by each committee.”

The Question is that the Committee recommends to the Assembly that schedule 1, paragraph 7 be amended as set out in the amendments. Are there any comments? John O’Dowd and Michelle O’Neill have indicated that they will abstain.

The Committee divided: Ayes 9, Noes 0

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross,
Mr Storey

Question accordingly agreed to.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 36, paragraph 22, at end insert

“ ‘Representative of the community in Northern Ireland’ ”

23.— (1) In this Schedule, and without prejudice to the generality of the words, a membership ‘representative of the community in Northern Ireland’ shall in particular include—

(a) persons with experience of the controlled, maintained, grant-maintained integrated, Irish-medium and voluntary grammar school sectors; and,

(b) persons from [*a broad geographic range of*] local government districts, where ‘local government district’ has the same meaning as in the Local Government (Boundaries) Act (Northern Ireland) 2008.”

This amendment has an effect on what we have already agreed in respect of paragraph 2 of schedule 1. The legal advice to the Committee highlighted the possibility of inserting a definition at paragraph 22 of schedule 1 to make clear the factors that the Committee considers the Minister should have particularly in mind in relation to appointments to the ESA, so that the ESA members, as a group, are representative of the community in Northern Ireland. Adding a definition to paragraph 22 is an option if members wish to consider it.

The amendment gives rise to the issue of the legal competency of the words “a broad geographic range of”. Just as we did with the proposal earlier to add the word “proportionality”, we have to consider the legal competency of this amendment.

The Clerk of Bills:

The amendment is consequent to the one that you have just parked. It cannot be decided on until members decide on the other one.

The Chairperson:

The Question is whether we are content with schedule 1, paragraph 22, as drafted.

The Clerk of Bills:

You may be, depending on the advice that you receive.

The Chairperson:

Yes, but, at this moment in time, we are not content.

Mr D Bradley:

It is pending legal advice.

The Chairperson:

I will keep it simple; we are not content now because we are considering an amendment the legal competence of which has yet to be verified.

The Committee Clerk:

What we are saying is that we will bring the amendment back to members in light of the instruction given on the earlier amendment to paragraph 2 of schedule 1 that we seek legal advice on any changes.

Mr O'Dowd:

I assume that that legal advice will also consider the definition of "community" as outlined in the amendment, considering that there are a number of issues around section 75 of the 1998 Act. The amendment states that the membership should be representative of the community, but it goes on to mention only educational communities, backgrounds or sectors. To my mind, the two matters are not comparable.

The Chairperson:

I understand what you are saying. On one hand, the amendment states that membership should be representative of the community of Northern Ireland, but then the amendment goes on to specifically define sectors.

Mr O'Dowd:

Education sectors are being defined as the community. I do not know if that is competent.

The Committee Clerk:

That can be checked and legal advice can be sought, as with the amendment that was parked earlier.

The Chairperson:

Let us go back to the Question about paragraph 22, so that we are all clear — although I do not think that we are very clear on any of this. The Question is that members are not content with the Committee amendment to paragraph 22 of schedule 1.

Mr O’Dowd:

We are content with it.

The Chairperson:

Some members are content, so we will put it to a vote. If members are not content, that will mean that the Committee amendment will be considered for its legal competency and brought back to the Committee.

Question, That the Committee is content with schedule 1 as drafted.

The Committee divided: Ayes 2; Noes 9.

AYES

Mr O’Dowd, Mrs O’Neill

NOES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey

Mr Lunn:

I thought that we had to say that we are not content with paragraph 22 of schedule 1 in the light of the previous decision.

The Chairperson:

These things are not always straightforward. I hope that I am not going to throw a spanner in the works, but we have not gone through paragraphs 1, 2 and 3; rather, we have voted only on certain paragraphs of schedule 1.

Mr B McCrea:

I agree; I was going to ask you that.

Mr D Bradley:

We are dealing only with the paragraphs to which there are proposed amendments. If there were no amendments to the other paragraphs last week, we do not need to deal with those this week.

The Chairperson:

Am I not meant to ask the Committee, for the record, whether it is or is not content with all those items?

Mr D Bradley:

We did that last week.

The Chairperson:

What about the other paragraphs of schedule 1? Does that include the whole schedule?

The Clerk of Bills:

Once the Committee has considered all the amendments to the different paragraphs of schedule 1, a Question is asked at the end about the schedule as a whole. If any amendment has been agreed, the Committee would agree the schedule as amended. If no amendments are agreed, the Committee would agree the schedule as drafted, unless the Committee has some alternative.

The Chairperson:

The Question is that the Committee recommends to the Assembly that schedule 1 in its entirety be amended as proposed in the Minister's amendments and the Committee's amendments set out as we have already agreed.

The Clerk of Bills:

You cannot come to that Question yet because you have parked some matters relating to the schedule.

The Chairperson:

So, we cannot take a decision on schedule 1?

The Committee Clerk:

It is fair enough if you put a Question to members asking them whether they are content with the other paragraphs of schedule 1. If there is a proposal from members that they want to deal with the other paragraphs of schedule 1 to say that they are content with everything else that has not been the subject of proposals this morning, that is fair enough to put that to members.

The Chairperson:

I am worried that we are getting very confused about this. We have dealt with the amendments to the paragraphs of the schedules; however, we have not said whether we are content with the other paragraphs of the schedules. That worries me.

Mr D Bradley:

Surely, Chairman, we did that last week.

The Committee Clerk:

We did not take any final decisions last week. Today is when we mop up all final decisions.

The Clerk of Bills:

If any member has a difficulty with some part of schedule 1 that is not covered by any one of those amendments, they can either bring forward an amendment or vote against the final Question. Ultimately, members must make a decision on each of the schedules and clauses. If there are parts of the schedule that are not represented on the following few pages, then members must make an individual decision and then take a collective vote.

The Chairperson:

Do members have any comments on that?

The Committee Clerk:

If members now wish to vote that they are content with the remaining paragraphs of schedule 1, which we dealt with this morning, they may do so.

Mr Lunn:

Why would we not?

The Chairperson:

That is my opinion. It makes it very simple. Other than the elements of schedule 1 that we have agreed to seek legal clarity on or amendment to, are members content with the other paragraphs of that schedule?

The Committee Clerk:

You have proposed that, Chairperson, so members may wish to signal whether they agree.

The Chairperson:

I just want to be sure that members know where we are at. Schedule 1 is on pages 31 to 36 of the Bill, and it contains 22 paragraphs. I do not want anyone to think that there was an element of that schedule that they did not agree with. We have gone through the entire Bill, and five lever-arch files prove that.

Mr O'Dowd:

We should start again.

The Chairperson:

We could start again; that is what worries me.

Are members agreed that they are content with schedule 1, apart from the paragraphs that we agreed actions on? I note that Basil McCrea and John McCallister have abstained.

The Committee divided: Ayes 9, Noes 0

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey

Clause 2 (Functions and general duty of ESA)

The Chairperson:

Members will recall the Committee's consideration of adding the word "mental" to the list of ESA duties in clause 2(2)(a) and clause 2(2)(b). This is our final consideration and decision,

starting with paragraph (b). Our amendment, which is an amendment to the amendment that was tabled by the Minister of Education states:

“that contribute towards the spiritual, moral, cultural, social, mental, intellectual and physical development of those for whom those services are provided;”

It followed on from a discussion that took place last week. The Question is whether the Committee recommends to the Assembly that the clause be amended as set out above.

Mr O’Dowd:

In principle, it is difficult to argue against that amendment, but if something is included in a Bill, it must be ensured that it is competent, and the ripple effects of it must be considered. I note from the Minister’s letter that she is writing to the Minister of Health, Social Services and Public Safety, Michael McGimpsey, to seek his views on what effect the Department of Education’s inclusion of that amendment would have. The Committee would be wise to wait for that response.

The Committee Clerk:

This morning, advice from the Assembly’s Legal Services established that the amendment is competent and that it has meaning. Indeed, the word “mental” was included as part of a collection of words in English legislation; the Education Act 2002 and the Education Act 2005. Mental and physical development of children and young people were grouped together.

Mr B McCrea:

I would so propose, Chairperson.

The Chairperson:

It is proposed that the amendment be put forward by the Committee. Dominic Bradley has seconded it.

Mr Lunn:

Do we need to go through this procedure?

The Clerk of Bills:

You do not need a proposer when considering amendments to a Bill; the Committee either agrees the amendment by acclamation or pushes the amendment to a Division.

The Committee Clerk:

As long as a member is signalling that he or she wants to push it to a vote.

The Chairperson:

Are members content with the amendment?

Mr O'Dowd:

We will have to abstain if there is a vote. I want to hear what the Health Minister has to say; if he agrees with it, I have no difficulty with it.

Mrs O'Neill:

In her letter of 22 September, the Minister says that she wants to accommodate the Committee's wishes on the matter and that she will write to the Health Minister. She says that:

"I consider that the best approach would be to place a statutory duty on the ESA to co-operate with the Regional Health and Social Services Board and Health and Social Services Trust in promoting the mental health of children and young people."

The Chairperson:

Michelle is referring to the final paragraphs of the Minister's letter.

The Committee Clerk:

The Committee can note that and put it on the record. The Minister may bring forward an amendment in her own right.

Mr O'Dowd:

I would be happy enough to go to the vote.

The Committee Clerk:

A proposal is being put that the word "mental" be added at clause 2, page 1, line 15.

Question put.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

The Chairperson:

John O’Dowd and Michelle O’Neill have abstained.

Question accordingly agreed to.

The Chairperson:

I want to be clear about this: the Department proposed an amendment to clause 2(2)(b), but we have proposed our own amendment that amends the Department’s amendment, so we do not have to put the Question on the departmental amendment.

The Committee Clerk:

That amendment amended clause 2(2)(b). We have to go over clause 2(2)(a) again if we want to repeat it.

The Chairperson:

That is what I am saying — we do not need to.

Mrs O’Neill:

What are you saying about the departmental amendment? That amendment clarifies the duty that the ESA will have in relation to youth services, which is similar to the provision on schools, so we have to vote on that as well.

The Chairperson:

Our amendment includes all the wording in the Department’s amendment and inserts an additional word.

The Committee Clerk:

That amendment has just been agreed.

The Chairperson:

The Committee has agreed an amendment that adds the word “mental” to the Department’s amendment — “that contribute to the spiritual, moral, cultural, social, intellectual and physical development of those for whom those services are provided” — therefore we do not need to vote on the Department’s amendment.

The Committee Clerk:

The proposal is that clause 2(2)(a) be similarly amended by adding the word “mental” to the list.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 1, line 10, after “social” insert “mental”

Question put.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

The Chairperson:

John O’Dowd and Michelle O’Neill have abstained.

Question accordingly agreed to.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 2, line 6, at end insert—

‘(4A) ESA shall ensure that its functions relating to grant-aided schools are (so far as capable of being so exercised) exercised with a view to encouraging and facilitating the development of education provided in an Irish speaking school (within the meaning of Article 3(2) of the Education (Northern Ireland) Order 2006).’

Members will recall that C na G sought an amendment to clause 2 to place a duty on the ESA to encourage and facilitate the development of Irish-medium education.

Question put.

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr O’Dowd, Mrs O’Neill.

NOES

Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

Question put and negatived.

The Chairperson:

The last Question is that the Committee is content with the clause as drafted.

Mr O’Dowd:

Agreed. No, we are waiting —

Mr B McCrea:

Where are we now?

The Committee Clerk:

The Committee has voted to reject the Minister’s amendment; it is now being asked whether it is content with the rest of the clause as drafted.

The Chairperson:

That is, as the clause was before the insertion. Is the Committee content with the clause as drafted?

Question put, That the Committee is content with the clause, subject to the Committee’s proposed amendments.

The Committee divided: Ayes 7; Noes 4.

AYES

Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

NOES

Mr D Bradley, Mrs M Bradley, Mr O’Dowd, Mrs O’Neill.

Question accordingly agreed to.

Clause 2, subject to the Committee’s proposed amendments, agreed to.

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

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In clause 3, page 2, paragraph 2(a), line 27, leave out sub-paragraphs (i) and (ii) and insert

“(i) in the case of a controlled school, the Board of Governors of the school;

(ii) in the case of a voluntary or grant-maintained integrated school, the trustees of the school or (if the trustees so determine) the Board of Governors of the school; and”.

Members will recall that C na G sought an amendment to the Bill so that the owners and trustees of an Irish-medium school will be its submitting authority rather than the board of governors. Essentially, that is the same arrangement as that which has been proposed for Catholic maintained schools. The Minister proposed that amendment.

Question put.

The Committee divided: Ayes 4; Noes 7.

AYES

Mr D Bradley, Mrs M Bradley, Mr O'Dowd, Mrs O'Neill.

NOES

Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

Question accordingly negatived.

The Chairperson:

The question is that the Committee is content with clause 3 as drafted.

Mr B McCrea:

We are opposed to it as drafted.

The Committee Clerk:

Could we have a show of hands?

The Chairperson:

Just to be sure. We have not accepted the amendment from the Department. The Question is whether the Committee is content clause 3 as originally drafted.

Mr Lunn:

Having rejected the amendment?

The Committee Clerk:

Yes.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 1; Noes 10.

AYES

Mr Lunn.

NOES

Mr Craig, Mr D Bradley, Mrs M Bradley, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

Question accordingly negatived.

Clause 3 disagreed to.

Clause 4 (Employment schemes for grant-aided schools)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows:

In page 3, subsection 3, line 19, at end insert

“(4) The Department may by regulations make provision as to the form and content of employment schemes.”

Members will recall the concerns of stakeholders, including NICCE, AQE and GBA, regarding the lack of clarity on the employment relationships that the Bill will create. At the Committee's request, the Minister has agreed to make provisions as to the form of intended employment schemes by way of regulations. The Department's proposed amendment introduces the enabling provision for such regulations.

Question put.

The Committee divided: Ayes 4; Noes 6.

AYES

Mr D Bradley, Mrs M Bradley, Mr O'Dowd, Mrs O'Neill.

NOES

Mr Craig, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross,, Mr Storey.

Question accordingly negatived.

The Chairperson:

Trevor Lunn has abstained.

Clause 4 agreed to.

Clause 5 (Preparation and approval of employment schemes)

The Chairperson:

No amendments were proposed by either the Department or the Committee. Is the Committee content with the clause?

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross.

The Chairperson:

John McCallister and Basil McCrea have abstained.

Question accordingly agreed to.

Clause 5 agreed to.

Clause 6 (Reserve powers of ESA to make employment scheme)

The Chairperson:

This amendment springs from the amendment to clause 4 and gives the ESA a power to make employment schemes when the scheme submitted does not comply with the regulations to be made in relation to the form and content of employment schemes.

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows:

Page 4, paragraph (1)(c), line 11, leave out

from "subsection" to "cannot"

in line 13 and insert

section 5(1)(b) does not comply with regulations under section 4(4) or does not accord with any guidance issued by ESA under section 5(3) and cannot (in either case).

The Committee Clerk:

A complication exists because the Committee has rejected the amendment to clause 4. There is a proposed departmental amendment.

The Clerk of Bills:

On two occasions, the Committee declined to accept either its own or the Minister's amendment and voted against the clause. What is the Committee proposing?

The Clerk Assistant:

I do not wish to complicate this difficult matter further. The Committee is entitled to support neither the amendment nor the clause, and members may have different reasons for doing so, and those will be included in the report.

The Committee will have to return to another issue, and I do not suggest that you should do so now, because you are better going through the process and having a record of your view. If the Committee wants to act, there will have to be clarity on what the action will be. For example, if the Committee were to say that it did not support a clause, it would have the following options. First, it could agree to an amendment that would remove the clause. That would have major implications, because the clauses are significant, and the Committee would have to consider carefully whether it wished to do that. The second option is proposing amendment to a clause. The third option is that the Committee could decide that it had done what it could by forming its view and that it is for others to take action.

When the Committee agrees an amendment, the Chairperson will sign an amendment form on behalf of the Committee, and the amendment will be published on the Marshalled List of Amendments. If the Committee supports neither the amendment nor the clause, an action is to be taken, but we will not know what that action is unless the Committee gives us clarity.

I do not suggest that the Committee do anything about it now; it should come back to it. It is important that the Committee recognise that it has put on record its opposition to both the amendment and the clause; however, no action can be taken on its behalf without clarity on what the Committee wishes to do. The Committee must be clear on whether it wishes to remove the clause or whether it wishes to amend it.

My suggestion is that the Committee continue with the approach of agreeing its position. As has already been discussed, the Committee can come back to it before Consideration Stage and either do something or say that it has done as much as it can and that it is up to others to propose amendments. It is important that members understand the effect those decisions. It is entirely reasonable because people may have different reasons for coming to the same conclusion.

The Committee Clerk:

Members were not opposing the clause; they were saying that they were not content with the clause.

The Clerk Assistant:

That is my point. There is nothing wrong with what the Committee has decided, but it should be clear on that before any action can be taken on its behalf. The Committee can say that it has a

view and that that is as far as it is going. It can return to the issue another day.

The Chairperson:

Members, we should try to keep that in our minds: we are either content or not content. We will vote either to accept or reject the amendments, but the question still has to be put on whether we are content or not content with the clause. If we say that we are not content, do we still need to put in an action?

The Clerk Assistant:

You may do. The Committee could say that it has too many differing views on an issue and that, having done its best, it can do no more. Everyone will see the Committee's views in the Hansard report.

The Chairperson:

That is a fair position.

The Committee Clerk:

The Department has proposed an amendment to clause 6. The question is whether the Committee recommends to the Assembly that the clause be amended as proposed by the Minister.

The Chairperson:

The reason that the Department gave for putting forward that amendment was to ensure that the submitting authorities should comply with the regulations on employment schemes.

Question put.

The Committee divided: Ayes 5; Noes 6.

AYES

Mr D Bradley, Mrs M Bradley, Mr Lunn, Mr O'Dowd, Mrs O'Neill.

NOES

Mr Craig, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

Question accordingly negatived.

The Chairperson:

The Question is that the Committee is content with clause 6 as drafted.

Question, That the Committee is content with the clause, put and negatived.

Clause 6 disagreed to.

Clause 7 (Revision of employment schemes)

The Chairperson:

Is the Committee content with clause 7 as drafted?

Mr Lunn:

Does there have to be a vote?

The Chairperson:

Unless somebody says that they are not content. Do we need to vote?

The Committee Clerk:

If there is a signal that all members are content, that is taken as the majority and a count is not needed; however, if there is a signal that that is not the case, the Committee has to vote.

Mr Lunn:

Last week, the Ulster Unionists asked for a recorded vote on every clause.

Mr B McCrea:

I think that it is a recorded vote. Is it not?

The Chairperson:

It is not recorded if the Committee is content. However, if we are saying that we will vote on all the clauses, then we will vote on all of them.

Mr B McCrea:

We want to register our objection.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

NOES

Mr McCallister, Mr B McCrea.

Question accordingly agreed to.

Clause 7 agreed to.

Clause 8 (Effect of employment scheme)

The Chairperson:

The Question is that the Committee is content with the clause.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

NOES

Mr McCallister, Mr B McCrea.

Question accordingly agreed to.

Clause 8 agreed to.

Clause 9 (Transfer to ESA of staff employed by Boards of Governors)

The Chairperson:

The Question is that the Committee is content with clause 9.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

NOES

Mr McCallister, Mr B McCrea.

Question accordingly agreed to.

Clause 9 agreed to.

Clause 10 (ESA to employ peripatetic teachers)

The Chairperson:

The Question is that the Committee is content with clause 10.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

The Chairperson:

Mr McCallister and Mr McCrea have abstained.

Question accordingly agreed to.

Clause 10 agreed to.

Clause 11 (Salaries, etc, of staff: administrative and financial arrangements)

The Chairperson:

Members will recall that the need for an amendment was highlighted by the stakeholders, notably the Western Education and Library Board and the General Teaching Council for Northern Ireland (GTCNI). The General Teaching Council pointed out that salaries would be drawn from the LMS formula funding regime of any school, which was surely not the intention. The Department recognised that and proposed a two-part amendment to clause 11. I will not read it all out, but members are aware of the issue. Perhaps Chris will clarify the matter.

The issue of teachers' salaries being looked at as an average has been raised. Older teachers can cost schools more money because of the different promotion points on their salary scales. Why is there a need for that clause?

Mr Stewart:

Chairman, are you asking why there is a need for the clause at all or for the amendment?

The Chairperson:

Sorry; I am asking why there is a need for the amendment.

Mr Stewart:

Without the amendment, boards of governors would not be able to manage the very difficulty that you pointed out. It is a fact that teachers of different ages and experience can give rise to wins and losses and to benefits and costs in respect of the management of staffing budgets.

Without the amendment, boards of governors will not be able to address that problem; rather,

the education and skills authority will make those decisions for controlled and maintained schools, while other schools will have the flexibility to manage their budgets to address, among other things, the difficulty that you raised. The amendment will level the playing field, provide equality and ensure that all boards of governors can manage their staffing budgets.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 6, paragraph (5) and (6) line 23, leave out subsection (5) and (6) and insert

(5) Notwithstanding any of the previous provisions of this Act, the budget share of a grant-aided school shall include an amount in respect of—

- (a) the salaries and allowances of the staff of the school; and
- (b) the relevant contributions in respect of such staff.

(6) But—

(a) in the case of a voluntary grammar school, ESA may set-off against the maintenance grant payable under Article 61(2)(a) of the 1998 Order any payments made by ESA itself in respect of the matters mentioned in paragraphs (a) and (b) of subsection (1);

(b) in the case of a grant-maintained integrated school, ESA may set-off against the maintenance grant payable under Article 63(2)(a) of the 1998 Order any payments made by ESA itself in respect of the matters mentioned in paragraphs (a) and (b) of subsection (2).

Question put.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

The Chairperson:

John McCallister and Basil McCrea have abstained.

Question accordingly agreed to.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 6, line 43, at end insert

“(c) ‘the appointed day’ means the day appointed under section 54 for the coming into operation of section 3.”

Question put.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O’Dowd, Mrs O’Neill, Mr Ross, Mr Storey.

The Chairperson:

John McCallister and Basil McCrea have abstained.

Question accordingly agreed to.

Clause 11, subject to the Committee’s proposed amendments, agreed to.

Clause 12 agreed to.

Clauses 13 to 16 agreed to.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the following new clause be inserted: After clause 16, insert

“ESA to contract for certain capital works [j2597]

*.—(1) ESA may enter into contracts for, or in connection with, the provision or alteration of the premises of a grant-aided school.

(2) Those contracts may include contracts with the trustees or Board of Governors of a voluntary or grant-maintained integrated school requiring specified payments to be made to ESA by the trustees or Board of Governors at specified times.

(3) ESA may under the powers conferred by subsection (1) enter into a contract (“an approved contract”) with another person (“the contractor”)—

(a) under which the contractor undertakes at his own cost—

(i) to provide or alter any premises of a grant-aided school; and

(ii) to maintain, or provide other services in relation to, those premises over the term of the

contract,

in consideration for the payment by ESA of sums of money in instalments over the term of the contract; and

(b) which has been approved by the Department for the purposes of this subsection.

(4) The inclusion in a contract of matters other than those mentioned in paragraph (a) of subsection (3) does not prevent the contract falling within that paragraph.

(5) In Article 2 of the 1986 Order for paragraphs (2G) and (2H) substitute—

“(2D) In the Education Orders references to—

(a) an approved contract,

(b) the contractor, in relation to an approved contract,

shall be construed in accordance with section {j2597}(3) of the Education Act (Northern Ireland) 2009.

(2E) References in the Education Orders to the staff of or at a school or to persons employed at, in or about a school do not include references to persons employed by the contractor for the purposes of an approved contract.” ”

This is a new clause to be inserted after clause 16. It addresses a provision to allow the ESA to be the contracting authority for major capital works in grant-aided schools.

Question put and agreed to.

Clause 17 (ESA to pay superannuation benefits of teachers)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 9, line 16 after ‘Department)’ insert

“for paragraph (1)”.

That amendment clarifies the reference to the article in the Superannuation (Northern Ireland) Order 1972, which is amended by clause 17 of the Bill.

Question put and agreed to.

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

Clause 17, subject to the Committee’s proposed amendment, agreed to.

Clauses 18 to 20 agreed to.

Clause 21 (Dissolution of certain statutory bodies)

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 9; Noes 2

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O’Dowd, Mrs O’Neill, Mr Ross, Mr Storey.

NOES

Mr McCallister, Mr B McCrea.

Question accordingly agreed to.

Clause 21 agreed to.

Clause 22 (Transfer of assets, liabilities and staff)

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O’Dowd, Mrs O’Neill, Mr Ross, Mr Storey.

NOES

Mr McCallister, Mr B McCrea.

Question accordingly agreed to.

Clause 22 agreed to.

Clause 23 (General duty of the Department and DEL)

The Chairperson:

I beg to move:

That the Committee recommend to the Assembly that the clause be amended as follows: In page 12, line 8, after “social” insert “mental”.

Clause 23 concerns the general duty of the Department and DEL. As discussed earlier under clause 2, which we have agreed to, we have approved the insertion of the term “mental”.

The Committee Clerk:

Those amendments relate to clause 2(2)(a) and clause 2(2)(b)

The Chairperson:

That means that we have to amend this clause in the same way in order to be consistent. We would have to agree to that, the same as we did for clause 2.

The Committee Clerk:

That is up to members. It could be seen as a consequential amendment.

The Chairperson:

I note that Michelle O’Neill and John O’Dowd have indicated that they will abstain.

Question put.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

Question accordingly agreed to.

Mr B McCrea:

Is that clause about the Department of Education and the Department for Employment and Learning? Am I on the right clause?

The Chairperson:

Yes.

Mr B McCrea:

Were the two Ministers meeting to discuss something? Is this the clause that they will discuss?

The Chairperson:

There is a reference to that in the Minister's letter.

Mr D Bradley:

The Education Minister is going to contact the Health Minister.

The Chairperson:

No, this is to do with DEL.

The Committee Clerk:

I do not think that the letter indicated a clause.

The Chairperson:

Perhaps I said DEL and I should not have; it is really the Health Department.

The Committee Clerk:

The Minister's letter of 22 September mentions an amendment that relates to the Careers Service.

The Chairperson:

That is not to do with clause 23.

Mr B McCrea:

I read somewhere that the Minister said she was talking to Reg Empey.

Mr D Bradley:

She has accepted the amendment from DEL.

Mr B McCrea:

So, is this it?

The Chairperson:

No. There is nothing in clause 23 that refers to DEL. Sorry, there is. Clause 23(2) states that:

“It shall be the duty of DEL to promote further and higher education in Northern Ireland.”

That was not any reference to —

Mr B McCrea:

I was just checking. Thank you.

The Chairperson:

We took a vote on clause 23, did we not?

The Committee Clerk:

Yes, we did.

Clauses 24 and 25 agreed to.

Clause 26 (Discharge by ESA of its functions under sections 24 and 25)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 14, line 12, at end insert

“(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; and”

This is a departmental amendment in response to a submission from C na G, which aims to ensure that the ESA, in relation to the curriculum and examinations, considers the requirements of those who attend Irish-speaking schools.

The Question is that the Committee recommends to the Assembly that this clause be amended as proposed by the Minister as set out above.

Mr Ross:

How does that extend the current position? Are we saying that due regard is not currently being given to the requirements of those attending Irish-medium schools? I do not see the need for the

amendment.

The Chairperson:

Will Mr Stewart facilitate the Committee, please?

Mr Stewart:

The member has partly answered his own question. The amendment is proposed because the Minister is satisfied that the needs of those being educated through the medium of Irish are not currently being sufficiently met, particularly in relation to curriculum support, and it is felt that placing that duty on the ESA would put it in a position to remedy the current shortcomings.

Mr Ross:

What are the current shortcomings that have been identified as needing to be resolved?

Mr Stewart:

To put it in crude and, perhaps, over-simplified terms, it was felt that something of a one-size-fits-all approach was being taken, particularly around curriculum support, and that such an approach does not sufficiently recognise that students are being taught through the medium of Irish rather than English. Therefore, the needs for curriculum-support materials are quite different. It is not enough to translate English-language materials into Irish: a more fundamental examination is needed of what materials are required by teaching staff.

Mr D Bradley:

Until now, the education and library boards have said that they are under no legal obligation to provide curriculum support and back-up for Irish-medium schools; consequently, there has not been much of it. Comhairle na Gaelscolaíochta wanted the amendment to ensure that that would not be the case under the ESA and to copper-fasten the provision of those services to the sector.

Mr McCallister:

How can curriculum support be defined in any one area? The Committee hears the same claims about the need for support materials from others, particularly special needs groups; they need specific materials for people who are blind or who have hearing difficulties.

Mr Stewart:

That is already covered by the clause.

Question put.

The Committee divided: Ayes 5; Noes 6.

AYES

Mr D Bradley, Mrs M Bradley, Mr Lunn, Mr O’Dowd, Mrs O’Neill.

NOES

Mr Craig, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

Question accordingly negatived.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: in page 14, line 19, leave out from “and” to end of line 21.

The effect of that is to remove clause 26(2)(b):

“persons who have a learning difficulty (as defined in Article 2 of the Further Education (Northern Ireland) Order 1997 (NI 15)).”

Mr O’Dowd:

Chairperson, may I have a moment to familiarise myself with the proposed amendment.

The Chairperson:

Does Mr Stewart want to comment on DEL’s recommended amendment? If I remember accurately, the Committee received correspondence from the Committee for Employment and Learning that stated that it was happy with the proposed amendment.

Mr Stewart:

I may have taken longer to get to the table than I will spend at it on this occasion. I am not in a position to comment in detail about why DEL has put forward the amendment, but it is proposed on the advice of that Department. I do not think that the amendment reflects any great policy change; it is based on technical advice that the provision is no longer required.

Mr Lunn:

I am curious about why there is no explanation. DEL says that we do not need the Further

Education (Northern Ireland) Order 1997, but was it not needed in 1997? What is different now?

Mr Stewart:

I cannot shed any light on that today; I will have to check that with DEL colleagues and come back to the Committee with an answer.

The Chairperson:

Clarification of that would be useful.

Mr Stewart:

I am conscious of pressures on the Committee's time; therefore, if it helps, I will try to get a line on that over lunchtime.

The Chairperson:

I will now ask the Committee whether it recommends to the Assembly that the clause be amended as proposed by the Minister as set out above. This Question relates to the DEL amendment.

Mr O'Dowd:

Will the Committee postpone a vote until after lunch, by which time it will have received that clarification?

The Chairperson:

With members' agreement, the meeting is suspended until 1.30 pm.

Twenty-five minutes of proceedings not reported as Hansard not provided with sound recording.

Clauses 43 to 46 agreed to.

Clause 47 (Directions as to exercise of child protection duties by Boards of Governors)

The Chairperson:

Do Committee members have any comments on the clause?

Miss McIlveen:

The National Society for the Prevention of Cruelty to Children (NSPCC) raised an issue with the

clause.

The Chairperson:

The Minister's letter of 22 September 2009 states:

"NSPCC has proposed that Clause 47 be amended".

It also states:

"It is not appropriate for ESA to issue a direction to a Principal and, in effect, 'by-pass' the Board of Governors. Boards of Governors are accountable for the actions of school-based staff, and it is for the Boards to issue instructions to those staff. Issuing directions to the Board of Governors, albeit on foot of a failure by the Principal, will ensure that they are kept informed of the position and have the opportunity to consider the issue and wider safeguarding practice within the school."

Miss McIlveen:

I just wanted to put on the record that the NSPCC raised an issue with the clause.

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

Clause 47 agreed to.

Clause 48 agreed to.

Clause 49 (Catholic maintained schools)

The Chairperson:

Members will recall that the Department's proposes to remove clause 49 as a separate approach to Catholic maintained schools is no longer required. The Minister will give notice of her intention to oppose the Question that clause 49 stands part of the Bill. Are members content with that proposal?

Mr B McCrea:

No, we object.

Mr D Bradley:

Chris, will you refresh our memories on the Department's reasons for wanting to remove clause 49?

Mr Stewart:

Clause 49 is a carry-over from the existing provisions in the Education Reform (Northern Ireland) Order 1989, which set up a definition for Catholic maintained schools as part of a much broader provision. That set out a separate set of administrative arrangements for Catholic maintained

schools with the aim of moving towards a single set of administrative arrangements, albeit one that would support a diversity of schools.

It is no longer necessary or appropriate to take that approach to defining Catholic maintained schools. As we mentioned briefly last week, it is, nevertheless, still necessary in one or two places to refer to Catholic schools in legislation. On foot of that, we have proposed in the amendments a different definition for Catholic schools. Lest it would give rise to any concern on the part of Committee members, that is not a softening of the policy intention to simplify administration; it is simply a pragmatic reflection of reality. From time to time, it is necessary to refer to different types of schools and to have definitions, but the approach that is currently taken in clause 49 is not required, hence the Minister's proposal that it be removed.

Mr D Bradley:

Why was that clause included in the Bill in the first place?

Mr Stewart:

From the beginning of the RPA, it was always intended to make those changes. The original proposal was to remove the definition of Catholic maintained schools in the second education Bill. That was purely because we thought that it was quite an onerous and difficult task to deal with all the various references in legislation. However, when we looked at it in some detail, we recognised that it was not as difficult as we had first thought and that it was possible to deal with it in the first Bill.

Mr B McCrea:

In your explanation, you said that there was some need for different designations of schools at different stages. Given the way that thinking is emerging about area-based planning, it might be useful to have certain designations. That is why we are opposed to their removal; we believe that a one-size-fits-all policy cannot be used, and that we will end up with designations.

Mr Stewart:

That is correct, and the Minister would agree with that. She would point to the fact that the designations and definitions for other types of school are already in legislation and will remain in legislation; we are not taking any away. The Catholic trustees strongly support the removal of the separate definition of Catholic maintained schools. They are very clear that they want to see

participation by the representatives of Catholic schools in area-planning arrangements, but they do not favour a separate categorisation of Catholic grammar schools and Catholic maintained schools. The definition of grammar school will remain in legislation.

Mr B McCrea:

Perhaps it is too much detail to deal with at this stage, but there was a general agreement that having some form of designation might be helpful in area-based planning. I am reluctant to take away a definition that is already in existence.

Mr Stewart:

The Committee must come to a view on that. I reassure you that that would not disadvantage any Catholic schools, maintained or otherwise. The trustees are also of that view.

Chairperson, if you wish to return to clause 26 while I am here, I am happy to do so.

The Chairperson:

Thank you, Chris. We will deal with clause 49 and then return to clause 26.

The Question is that the Committee recommends to the Assembly the removal of clause 49 as proposed by the Minister and set out above. I ask members to indicate whether they are in favour of clause 49. I note that Jonathan Craig, Michelle McIlveen and Alastair Ross have indicated that they wish to abstain, and I also shall abstain.

Question put.

The Committee divided: Ayes 5; Noes 2

AYES

Mr D Bradley, Mrs M Bradley, Mr Lunn, Mr O'Dowd, Mrs O'Neill

NOES

Mr McCallister, Mr B McCrea

Clause 49 disagreed to.

Clause 26 (Discharge by ESA of its functions under sections 24 and 25)

The Chairperson:

Chris, can we go back to clause 26 now, please?

Mr Stewart:

Members have asked for a further explanation as to why DEL proposed an amendment to remove clause 26(2)(b). Having checked the background to it, the amendment was based on the advice of legislative counsel and was agreed by our colleagues in DEL. Legislative counsel pointed out that clause 26 refers back to clauses 24 and 25. The focus of those clauses is entirely on what happens in schools. Therefore, it pointed out that the reference in clause 26(2)(b) to further education was simply not necessary and was superfluous, and it was recommended that it ought to be taken out.

Subsequent to that, as you know, DEL sought an agreement to amendments to introduce a similar range of functions for the ESA to cover further education, similar to those in clauses 24 and 25, which deal with schools. At the end of the new clause that DEL has proposed to be inserted after clause 28, a reference to persons with special learning needs, similar to the one that is proposed to be removed from clause 26(2)(b), is included. In essence, it is proposed that that reference be taken out from a part of the Bill where it is not appropriate and that it be reinserted in a new clause in the Bill where it would be more appropriate.

At the risk of further complicating the matter, we read the clause and the amendments again over lunch, and we are not entirely satisfied that the wording of the proposed DEL amendment is entirely correct.

It appears to include a cross-reference to the clause that we have proposed to remove. We will seek advice from legislative counsel. If there is an error, it will not be difficult to fix. We would revise the wording of the DEL amendment in order to ensure that there is not an erroneous cross-reference.

Mr B McCrea:

You will just rewrite it then, Chris. Is that what you are saying?

Mr Stewart:

If there is an error, we will fix it. I believe that there is an error.

The Chairperson:

We did not agree on the amendment that was tabled by DEL. All we can do is agree on that amendment. An amendment will probably have to be tabled by the Department at Consideration Stage. Alternatively, it could come back to us.

Mr Stewart:

It might assist the Committee if we confirm with our colleagues in DEL that their amendment is not quite correct at present. We will secure their agreement to correct that error. We will bring that back to the Committee. When it comes to Consideration Stage, I suspect that the Minister of Education will move the amendment. However, she will move a slightly revised amendment. I assure members that the effect of the amendment will remain exactly as currently drafted.

The Chairperson:

I still think that we need to agree clause 26 as amended. So the Question is that the Committee recommends to the Assembly that the clause be amended as proposed by the Minister for Employment and Learning.

Mr O'Dowd:

Can we consciously accept it? Can we note it and return to it later?

The Committee Clerk:

On a point of clarification; if I understand Chris correctly, the opposition to and removal of that is correct. Somewhere else in the DEL amendments, there may be an error that the Committee has already approved. Therefore, it is not an issue here. Chris has given us an extra piece of information, which we will learn about in the future. It does not affect this vote, as I understand it.

The Chairperson:

Are members content?

Mr B McCrea:

I have no idea.

Mr Stewart:

You will just have to trust us.

Question accordingly agreed to.

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

Clause 26, subject to the Committee's proposed amendment, agreed to.

Clause 50 agreed to.

Clause 51 (Regulations and orders)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 29, line 16, paragraph (1), at start insert

“Except as provided by subsection (6),”

In page 29, line 24, paragraph 5, at end insert

“(6) No regulations shall be made under Schedule 1, paragraph 7 unless a draft of those regulations has been laid before, and approved by resolution of, the Assembly.”

The Committee has discussed the merits of making important regulations or orders under the Bill subject to draft affirmative resolution by the Assembly as opposed to negative procedure. Please, do not go down that road today. The Committee now has the opportunity to recommend to the Assembly such an amendment to the Bill; however, only if the Committee has recommended the amendment to schedule 1, paragraph 7.

The Committee Clerk:

There is one complication, which I will mention in a moment. The Committee may consider three or, perhaps, all four of those sets of amendments. With regard to the third, I will make a slight change to the Chairman's proposal.

Question put.

The Committee divided: Ayes 9; Noes 2

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

NOES

Mr O'Dowd, Mrs O'Neill.

Question accordingly agreed to.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 29, line 16, paragraph (1), at start insert:

“Except as provided by subsection (6),”

In page 29, line 24, paragraph 5, at end insert:

“(6) No regulations shall be made under section 30(6) unless a draft of those regulations has been laid before, and approved by resolution of, the Assembly.”

Question put.

The Committee divided: Ayes 9; Noes 2

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

NOES

Mr O’Dowd, Mrs O’Neill.

Question accordingly agreed to.

The Committee Clerk:

The next proposal is a draft affirmative resolution for proposed new clause 4(4), which relates to the regulation on employment schemes. As the Committee has opposed the Minister’s amendment relating to employment schemes, I will adjust the Question, if I may, so that it would read: “The Question is that, should the regulation amendment in relation to bringing forward regulation on schemes of employment be tabled, the Committee recommend to the Assembly that clause 51 be amended as set out above”.

The Chairperson:

That simply means that if the Minister or someone else proposed the amendment, it would be subject to the draft affirmative resolution procedure.

Question put.

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

NOES

Mr O'Dowd, Mrs O'Neill.

Question accordingly agreed to.

The Chairperson:

The next proposed amendment is still related to clause 51.

The Committee Clerk:

That still applies. If I may clarify, that proposed amendment would have the effect of making clause 12(1), which is the modification of employment law, subject to draft affirmative resolution of the Assembly.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: in page 29, line 17, leave out

“section 50(1)” and insert “sections 50(1) or 12(1)”

I note that Mr O'Dowd and Mrs O'Neill wish to abstain from this vote.

Question put.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

Question accordingly agreed to.

Question put, That the Committee is content with the clause, subject to the Committee's proposed amendments.

The Committee divided: Ayes 9; Noes 2.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Mr McCallister, Mr B McCrea, Miss McIlveen, Mr Ross, Mr Storey.

NOES

Mr O'Dowd, Mrs O'Neill.

Question accordingly agreed to.

Clause 51, subject to the Committee's proposed agreements, agreed to.

Clauses 52 to 53 agreed to.

Clause 54 (Commencement)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows: In page 30, line 24, at end insert

“(cc) section 29 and Schedule 6;”

This amendment is proposed by the Department. Members will recall that it allows the commencement of the clause on disciplinary powers of the General Teaching Council to be commenced upon Royal Assent, as those clauses are urgently required in order to comply with other jurisdictions. There are six abstentions; Jonathan Craig, John McCallister, Basil McCrea, Michelle McIlveen, Alastair Ross and myself.

Question put.

The Committee divided: Ayes 5; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Lunn, Mr O’Dowd, Mrs O’Neill.

Question accordingly agreed to.

Clause 54, subject to the Committee’s proposed amendment, agreed to.

Clause 55 agreed to.

The Chairperson:

We now move to the schedules. We have already dealt with schedule 1.

Mr B McCrea:

Do we not have to deal with the schedule in its entirety? We have dealt with individual parts of it.

The Committee Clerk:

We have dealt with it in its entirety.

Schedule 2 (Transfer to ESA of staff employed by Boards of Governors)

The Chairperson:

I note that Basil McCrea and John McCallister have indicated that they wish to abstain.

Question, That the Committee is content with the schedule.

The Committee divided: Ayes 9; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Craig, Mr Lunn, Miss McIlveen, Mr O'Dowd, Mrs O'Neill, Mr Ross, Mr Storey.

Question accordingly agreed to.

Schedule 2 agreed to.

Schedule 3 (Transfer of assets, liabilities and staff of dissolved bodies)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: In page 40, line 8, paragraph 5, leave out paragraph 5 and insert—

'5.—(1) ESA shall make arrangements for a statement of accounts to be prepared in relation to each dissolved body for the relevant period.

(2) Each statement of accounts shall—

(a) be in such form, and

(b) contain such information,

as the Department may direct.

(3) ESA shall, within such time after the end of the relevant period as the Department may direct send a copy of each statement of accounts to the Department.

(4) In this paragraph "the relevant period" means the period—

(a) beginning on such day as the Department may direct; and

(b) ending immediately before the appointed day.'

That proposed departmental amendment makes arrangements for the ESA to proceed with regard to reporting on its first set of accounts following advice from the Department of Finance and Personnel.

Members will recall that the amendment from the Department of Culture, Arts and Leisure (DCAL) to line 20 on page 38 is no longer required because those assets or liabilities have already been transferred to the new Library Authority.

Question put and agreed to.

Question, That the Committee is content with the schedule, subject to the Committee's proposed amendment, *put and agreed to.*

Schedule 3, subject to the Committee's proposed amendment, agreed to.

Schedule 4 (Transfer of certain assets and liabilities of CCMS before appointed day)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: In page 41, paragraph (3)(b), line 16, leave out head (b) and insert—

‘(b) the Roman Catholic Archbishop of Armagh and the Roman Catholic Bishops of Clogher, Derry, Down and Connor, Dromore and Kilmore; and’

This is a departmental amendment. Members will recall that the definition is required because of the proposed removal of clause 49. I note six abstentions: Jonathan Craig, John McCallister, Basil McCrea, Michelle McIlveen, Alastair Ross and myself.

Question put,

The Committee divided: Ayes 5; Noes 0.

AYES

Mr D Bradley, Mrs M Bradley, Mr Lunn, Mr O’Dowd, Mrs O’Neill.

Question accordingly agreed to.

Schedules 5 and 6 agreed to.

Schedule 7 (Minor and consequential amendments)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: in page 48, line 25, leave out from

‘for’ to end of line 27 and insert ‘for the words from “has the meaning” to the end substitute “means a maintained school whose trustees are appointed by, or on behalf of, the Roman Catholic Church;” ’

Schedule 7, page 50, line 5, leave out paragraph (6)

Schedule 7, page 51, line 16, leave out paragraph (15)

Schedule 7, page 55, line 31, leave out from ‘and’ to end of line 33 and insert—

‘(aa) in paragraph 1(2) for sub-paragraphs (a) and (b) substitute “the trustees and Board of Governors of the school;” ’

Schedule 7, page 61, line 5, leave out paragraph 18 and insert—

‘18.—(1) In Article 10(3)(aa) and (4)(aa) for “the body constituted by” substitute “a tribunal constituted in accordance with”.

(2) In Article 16(2) for sub-paragraphs (a) and (b) substitute “the Board of Governors of a grant-aided school shall consider any representations made to it by ESA”.

(3) In Article 16A(1) for the words from the beginning to “direction” substitute “ESA shall make arrangements for enabling the parent of a child of compulsory school age to apply to a tribunal constituted in accordance with regulations under paragraph (6) for a direction”.

- (4) In Article 16A(2)(a) and (b) for “body” wherever occurring”, substitute “tribunal”.
- (5) In Article 16A(5)(a) for “pupil” substitute “child”.
- (6) In Article 16A(6)—
- (a) for “a body” substitute “tribunals”;
- (b) in sub-paragraphs (a), (b) and (c) for “the body” substitute “a tribunal”;
- (c) after sub-paragraph (c) insert—
- “(cc) may provide for two or more tribunals to sit at the same time;”;
- (d) in sub-paragraph (d) for “the Department” substitute “ESA”.
- (7) In Article 16A after paragraph (6) substitute—
- “(6A) A tribunal is not to be regarded as a committee of ESA.”
- (8) In Article 16A for paragraph (7) insert—
- “(7) ESA may make payments to members of a tribunal—
- (a) for or in relation to their service a members; and
- (b) by way of travelling and subsistence allowance.”.
- (9) In Article 16B(1)(d), for “the body established” substitute “a tribunal constituted”.
- Schedule 7, page 62, line 13, leave out sub-paragraph (7) and insert—
- ‘(7) In Article 32(2) for sub-paragraphs (a) and (b) substitute “the Board of Governors of a controlled or maintained school shall consider any representations made to it by ESA.”’
- Schedule 7, page 62, line 21, leave out sub-paragraphs (13) to (17) and insert—
- ‘(13) In Article 55(3) and (6) for sub-paragraph (c) substitute—
- “(c) where the school is a maintained school, the trustees of the school.”.’
- (14) In Article 56(1)—
- (a) for “the board concerned” substitute “ESA”;
- (b) for sub-paragraph (b)(iii) substitute—
- “(iii) where the school is a maintained school, the trustees of the school,”
- (c) in sub-paragraph (b) for “that Council” substitute “those trustees”.
- (15) In Article 56(2) for sub-paragraph (d) substitute—
- “(d) where the school is a maintained school, the trustees of the school,”.
- (16) In Article 60(5) for “all the boards, the Council for Catholic Maintained Schools” substitute “ESA”.
- (17) In Article 60(8) and (11) for sub-paragraph (c) substitute—
- “(c) where the school is a maintained school, the trustees of the school,”.’

This departmental amendment is neither minor nor consequential because it is as long as the schedule. Members will recall that the Department commented that the most significant amendments in schedule 7 relate to the amendment of the Education (Northern Ireland) Order 1997. It will place a duty on the ESA to appoint exceptional circumstances tribunals to consider appeals from parents regarding admission to secondary schools for their children. We know that the regulations are going out for consultation.

Question put and agreed to.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: In page 54, line 28, omit ‘and’

In page 54, line 29, at end insert ‘and

“(d) the Education (Northern Ireland) Order 2009”.

This amendment has been tabled by the Department for Employment and Learning.

Question put and agreed to.

The Committee Clerk:

Before we leave schedule 7, I draw members’ attention to the Minister’s letter of 22 September, in which the Minister highlighted another amendment in relation to DEL and the Careers Service. The four lines at the end are effectively the amendment, the detail of which is given in the commentary. Does the Committee want a moment to consider deciding on that amendment now? Alternatively, the Committee may wish to defer reaching an opinion as it has only just received the information.

The Chairperson:

Do members have any comments?

Mr O’Dowd:

Do we know whether the Committee for Employment and Learning has a view?

The Chairperson:

That was not included in the correspondence from the Department for Employment and Learning. This amendment has only just been received. Chris, can you elaborate?

Mr Stewart:

It may not have been considered by the Committee for Employment and Learning yet, because the need for the possible amendment arose after the main block of amendments was proposed by DEL. The Minister of Education sees no difficulty with it. The rationale for the amendment is clear: it is to put beyond doubt the legality of the ESA and schools providing to the Careers Service information that it needs to assist children and young people, particularly those who are at risk of losing contact with the education system. It is to ensure that the Careers Service is in a

position to provide the most effective service that it can, and the Minister supports the amendment for those reasons.

The Chairperson:

It is nice to see the independent schools getting a mention at last. It might be only a very small step, but it is in the right direction. I have to say that I declare an interest.

Mr Stewart:

Independent schools are mentioned in clause 37 as well. They are within the remit of the inspection regime.

The Chairperson:

We know that — passed with flying colours.

Clerk, can you advise us on whether the Committee can accept that amendment?

The Committee Clerk:

If it is the Committee's wish to do so, despite the late notice.

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the schedule be amended as follows: in page 64, line 4, at end insert—

“(4) In Article 37(8) after sub-paragraph (c) insert—

“(ca) the Board of Governors of a grant-aided school; and

(cb) the proprietor of an independent school.”.

I ask members to consider the amendment set out on the last page of the Minister's letter.

Question put and agreed to.

Question, That the Committee is content with the schedule, subject to the Committee's proposed amendments, *put and agreed to.*

Schedule 7, subject to the Committee's proposed amendments, agreed to.

Schedule 8 (Repeals)

The Chairperson:

I beg to move

That the Committee recommend to the Assembly that the clause be amended as follows:

In page 72, leave out lines 13 and 14

In page 72, leave out lines 20 to 24 and insert—

‘Article 25’

In page 73, leave out lines 12 and 13

In page 73, leave out lines 35 and 36 and insert—

‘In Article 61(1) the words “situated in its area”.
Article 61(3).’

In page 73, leave out lines 39 and 40 and insert—

‘In Article 63(1) the words “situated in its area”.
Article 63(3).’

In page 73, line 47, leave out from beginning to end of line 3 on page 74 and insert

‘Article 70(3) to (7), (9) and (10).’

In page 74, line 41, at end insert—

‘Article 28.’

These are proposed departmental amendments to schedule 8. Chris, is this a tidying-up exercise?

Mr Stewart:

Yes.

The Committee Clerk:

It is a whole collection of amendments.

Mr B McCrea:

The amendments are simply tidying-up amendments.

The Chairperson:

Yes; that is what I have just asked Chris. Chris, can you clarify further?

Mr Stewart:

To be clear: is the focus of your question schedule 8?

The Chairperson:

Yes; schedule 8.

Mr Stewart:

These are a set of consequential repeals. They do not in themselves make any great policy change, but they give effect to the policy changes elsewhere in the Bill. As you say, they are a tidying-up exercise. They remove pieces of the vast body of education legislation that are no longer required.

The Chairperson:

The Question is that the Committee recommends to the Assembly that the schedule be amended as proposed by the Minister?

Members indicated assent.

The Chairperson:

That brings us to the end of our clause-by-clause scrutiny of the Bill.

I want to place on record concerns about the way in which the Bill affects the controlled sector, and we had some discussion on that earlier. First, I want to highlight the extremely slow progress that there has been in establishing the controlled sector body. The lack of progress has meant that the controlled sector has not had the same opportunity as other sectors to influence the scrutiny of the Bill. The Minister has been willing to move to address some of the concerns raised by sectoral bodies. That begs the question of what might have been achieved had an effective controlled sector body been up and running six to eight months ago.

I am also concerned that the Department has told the Committee that it has no plans to commence its review of the teacher-employment and fairness/equality issues that arise in that regard through: the fair-employment exemption for teachers; the impact of the requirement to have a certificate in religious education on open access to teaching vacancies in the maintained sector, both now and if the exception is removed; and, in particular, how the latter will affect the respective opportunities of teachers in controlled schools and maintained schools if there is a significant rationalisation and school closures. There is a serious concern about whether staff be treated fairly.

If, as the Bill proposes, all teachers are employed by the ESA, then all ESA vacancies will presumably be open to all teachers who are at risk of redundancy. However, if roughly half of the vacancies are in maintained schools, in the majority of cases, vacancies in maintained schools

will not really be open to those teachers who work in controlled schools and who are at risk of redundancy because there may be a requirement for a certificate in religious education. On the other hand, all vacancies across both the controlled and maintained sectors will be open to teachers from the maintained sector who are at risk of redundancy.

Where the teachers in the different sectors were employed by different employers, the employers did not need to look beyond their own employees in trying to find alternative employment for teachers who are at risk of redundancy in their own schools. The ESA's obligations will be different and will encompass all staff at risk of redundancy in all grant-aided schools and all vacancies across all sectors. It appears that that will mean that there will be fewer alternative employment opportunities open to teachers in the controlled sector than in the maintained sector.

I propose that the Committee's report include a very strong recommendation that the Minister take urgent action to address all the issues that I have just summarised and find the resources to make immediate progress. That recommendation can be made in the knowledge that the Minister has already indicated to us in correspondence that there is neither the budget nor the resources available to carry out the promised review of the exemption in regard to the provision for a certificate for Catholic education. That ties in with the concerns that we have about the controlled sector, and I ask the Committee for its support on the issue so that the report that goes to the Assembly reflects our concerns in the strongest possible terms and asks the Minister to address them.

Mr O'Dowd:

There are parts of your comments that I have sympathy with and support, but there are parts with which I completely disagree. I am disappointed that you have raised your concerns at this juncture in the Committee's deliberations. Having heard your comments in the Committee meetings and elsewhere, I know that your concerns are connected to your party. Those matters do not necessarily need to be contained in the Committee's report to the Assembly. The Committee's report to the Assembly is a factual report of the deliberations on evidence given, amendments and the Bill in general. On that basis, I will not support the inclusion of those comments in the report.

On the issue of whether we could have heard more from the controlled sector, all five of the

education and library boards have appeared before the Committee, as have the educational boards' representative body, the grammar sector and the GBA. The door was open to anyone who wished to make written or oral presentations to us. Therefore, we have heard from the controlled sector. The thought that was in my head at the start of this morning's meeting is still there now: representatives in this room told us that there was a need and demand for a body for the controlled sector, but the evidence suggests to me that that may be more of a political demand than a demand from the sector itself.

The Chairperson:

The education and library boards were not tasked with being the sole advocate for, or defender of, the controlled sector. You must remember that when litigation was taken against some maintained schools, and when costs were incurred as a result of decisions made by, for example, CCMS, to amalgamate some schools, who picked up the tab? It was the education and library boards, not CCMS. I repeat; we are comparing apples with oranges. There is a sector that is clearly disadvantaged. In fact — speaking as a member of the Committee and not as its Chairperson — I would go so far as to say that, in some cases, it could be argued that it was not only disadvantaged but discriminated against because of the structures that were in place.

If we are moving into a new dispensation and if, as the Minister continually tells us, she wants equality and a level playing field for all, consideration must be given to the serious concerns about employment opportunities for staff in the controlled sector. They will be seriously disadvantaged when there is a rationalisation of the schools estate. We are not scaremongering; that will happen. There are schools in the controlled sector that will not be in existence in 10 or 15 years, as there are in the maintained sector. Who is going to employ those teachers if such a disincentive exists? Those teachers believe that they do not have the same opportunities as their peers or equals. I am quite happy for the Committee to comment further on that issue.

Mr D Bradley:

It is unfortunate that you raise those issues five minutes before we are due to finish the scrutiny of the Bill. I am not in a position to give my party's support to your views on that sort of notice. I would prefer to have discussions with my party first before I give you a definitive answer. I echo what John has said; the TRC appeared before the Committee to represent the controlled sector, or at least part of it. The representatives of that body made their case very strongly, and the Committee has acted on the shortcomings that they saw in the Bill and has tried to accommodate

their proposals. We had a discussion earlier about the new maintained body.

I also contend that the education and library boards do have a duty to represent the controlled sector's concerns. There are five of those boards, plus their representative body. There was ample opportunity for a number of bodies to represent the controlled sector. The TRC did that very well, and the Committee has acted upon, and tried to accommodate, its concerns. That is probably as much as we can do at this late stage.

The Chairperson:

I am quite happy to put the proposal to the Committee. I propose that —

Mr Lunn:

I would like to make a comment. Without wishing to repeat a lot of what has been said, on the face of it, I have a lot of sympathy for what the Chairperson has said, but it may be a bit much to expect me to commit to that sort of verbal statement on behalf of my party, especially at this stage.

As I said, that sounds very reasonable; however, I wish to see the proposal in writing so that I can dwell on it for at least a week. I do not understand why it has to be part of the Committee's report on the scrutiny of the Bill.

The Chairperson:

It is important that it be included in report in order to give confidence to all the sectors. Some sectors will gain certain things and others will not. In fairness to the Minister, she has refused some of the recommendations that the Irish-medium sector made. She made a decision, so not everyone will get what they are looking for. I think that the controlled sector wants to know what it is getting from the process.

Mr O'Dowd:

Where exactly is it saying that? Where is the statement from the controlled sector in which it states that position?

The Chairperson:

We are often told by the Minister that we are representing, or are not representing, the sector

because of the debate on academic selection. The principals of controlled primary schools, a considerable number of which are in my constituency, have told me that they just get their heads down and get on with their jobs. The issue for them is not so much the protection of the controlled sector but the fact that it has to fit within defined criteria. Other sectors have had safeguards and guarantees that they felt were necessary for the protection of their sector, but there are still serious concerns about the controlled sector.

Many people still have grave concerns about the issue of employment. It is not fair or right that one section of teachers has an advantage over others when applying for a job. We must put down a marker to show our concern, and I think that the right place to do that is in the report. I appreciate that some members feel that this issue has been brought to the table only today. However, it has been rehearsed numerous times in the past, ad infinitum, so I do not want to labour the point. I would be happy if we had the time to consider the proposal and put it to a vote next week. Do we have time?

The Committee Clerk:

Time is very tight because the Committee must approve its entire report at next week's meeting. I do not know whether the Committee wants to put it to a vote. A draft could be prepared in advance.

The Chairperson:

Yes; that is fair. We will supply members with a draft of my remarks and a specific proposal as soon as possible. We can vote next week on whether that should be included in the report.

Mr O'Dowd:

We are at the point of including papers on party positions in the report. That is where we are at. If that is what we need to do, that is what we need to do. There is a possibility that, for the first time, the Education Committee will have an agreed report. We are on the verge of having that. I do not see any need for the proposal. I do not need to read an Education Committee report to know what the DUP's or Ulster Unionist Party's position is. It airs that vocally, both privately and publicly, and is quite entitled to do so. However, do we really need to include that in the Education Committee's report on the Education Bill?

The Chairperson:

As has been previously said by members around the table, it would be good to get a consensus that there are serious issues within the controlled sector that need to be addressed.

Mr O'Dowd:

There are serious issues across all the sectors. One of the good things —

The Chairperson:

Maybe I could get finishing.

Mr O'Dowd:

I am sorry for interrupting, Chairperson, but just let me finish this. One of the good things about working in the Education Committee is that I get to meet people from all sectors. I not only meet and talk to principals from maintained schools but those from the controlled sector, too. I am sure that it is the same for you.

The Chairperson:

It is the same for us all. We have already spent this morning looking at the sectoral body for the controlled sector. That sector is at a clear disadvantage. It does not have a coherent structure in place within the timescale that has been allowed, and I am not convinced that the Department is not leading the controlled sector down a particular road.

The Hansard reports and the minutes of previous meetings will show that the Committee accepted that that sector needed additional resources to bring it close to the levels of other sectors — and we have heard from C na G, Northern Ireland Council for Integrated Education (NICIE) and CCMS. Therefore, it would be only right and fair from an educational perspective, not a party political one, to address that. Everybody has agreed that there are concerns; the Committee has highlighted concerns in other sectors, so there is no reason not to do so in this sector. Therefore, we will circulate to members the bones of the proposal that I outlined and the Committee will decide on it next week. Is that OK?

Mr B McCrea:

Chairperson, you know that you have my support. The Committee has not conducted many inquiries because it has had so much legislation to deal with. What are the chances of getting an

inquiry into the controlled sector?

The Chairperson:

Will members consider the issue of inquiries for next week? The other matter that I will put on the table is the report by Deloitte MCS Limited, which clearly indicated that there was underachievement among working-class Protestant boys.

Mr B McCrea:

I am wholeheartedly with the Chairperson; the Committee must look at both those issues.

Mr D Bradley:

I have already proposed an inquiry into the funding of primary school education. I was told at the time that that would be put on hold until such time as the scrutiny of the Education Bill was finished.

The Chairperson:

Will the Committee have the Clerk bring back a report on that in light of comments from Basil, Dominic and myself?

The Committee Clerk:

Most importantly, I must mention to the Committee the policy reviews and the likelihood of the second education Bill arriving shortly, as discussed earlier. The important review of special educational needs and inclusion is out for consultation at the moment. The Department has told me that the all-embracing review of early years is about to come back to the Committee. Bearing in mind the volume of work that emerged from the first Education Bill, members must consider whether one three- to three-and-a-half hour meeting each week will cover the workload if a second education Bill, two other reviews and an inquiry arrive all at once.

However, I can bring all of that to the Committee in a paper that will show members what is timetabled for departmental policy scrutiny, which is part and parcel of the Committee's statutory responsibility.

The Chairperson:

Are members happy with that approach?

Members indicated assent.

Mr B McCrea:

I understand that that the Committee has a responsibility to consider legislation and areas under statute, but there is no doubt that the way to deal with a truculent Committee is to drown it in paper. This Committee keeps being given loads of things to do, without actually getting to grips with the very real issues that exist. The three issues that have been raised are really important and members must find some way to deal with them. If that does not happen this side of Christmas, then they must definitely be made a priority once the Bill is passed. The Committee will just have to tell the Department that it cannot deal with some business; it must tackle issues that it considers important.

Mrs M Bradley:

Sure, we will work over the Christmas recess.

Mr B McCrea:

Mary, I wish you well.

Mr O'Dowd:

I have no difficulty looking at each inquiry as it is proposed, but an inquiry is held in order to reach a conclusion; one does not have a conclusion then an inquiry. I think it is great that after 30 years of having control of the education boards, members have copped on that there is a problem with the controlled sector.

Mr B McCrea:

You do not accept that the controlled sector exists.

Mr O'Dowd:

The controlled sector —

Mr B McCrea:

You think that there is no problem —

The Chairperson:

May I have some control of the meeting, please? The Clerk will bring forward a paper as agreed.

There is another important issue for us to deal with. The Committee has a work programme, and next week we will go through the Committee report. I referred to the issue previously, but now we have to make a decision one way or the other on the time of the Education Committee meeting. I had asked whether it was possible for us to move our meetings from the morning to the afternoon. I appreciate that that is a problem for Alastair, because he is a member of the Committee on Standards and Privileges, which meets on a Wednesday afternoon.

Mrs M Bradley:

I have a problem, but I am working on it.

The Chairperson:

Can we have a consensus on this? It is very difficult to facilitate everybody, but the reason for changing the time of our meetings is that one of our members is the Deputy Chairperson of another Committee that meets at the same time. I am not doing it because that member happens to be in my party; if any other member had come to me with the same problem, we would have brought the matter to you. I want to make that clear. Can we leave it that the Committee is happy to move to afternoon meetings as an interim arrangement to see how it works? Then, if we find that the arrangement is problematic, we can revisit it.

Mr O'Dowd:

What time are we agreeing to move to?

The Chairperson:

2.00 pm on a Wednesday afternoon.

Mr D Bradley:

Anything is better than Friday morning.

The Chairperson:

Yes; we do not want to move back to Friday mornings. You know the difficulties that we had with that.

So, the Committee will meet on Wednesday afternoons from 7 October 2009. Clerk, can you explain the reason for that date?

The Committee Clerk:

We have a long report to clear next week and the deliberations could take longer than the morning meeting. Therefore, I suggest that we meet at 10.00 am next week as usual in Room 144, with the option of going on into the afternoon should we need to. Thereafter, from 7 October, we will move to 2.00 pm on Wednesday afternoons for an interim period.

The Chairperson:

Members must bring all their folders next week. Thank you very much for your indulgence, which is very much appreciated.