



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Formal Clause-by-clause Scrutiny

3 February 2016

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Trevor Lunn
Mr Nelson McCausland
Ms Maeve McLaughlin
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Mr Alan Boyd	Department of Education
Mrs Caroline Gillan	Department of Education

The Chairperson (Mr Weir): Our main item of business today is the Committee Stage of the Addressing Bullying in Schools Bill. We have to do the formal clause-by-clause scrutiny. Obviously we have done it informally, but while there have been areas where we have agreed informally not to pursue any amendment, if members want to raise anything today, they are more than welcome to do so. There is an updated clause-by-clause table, and in the tabled papers there is a copy of the amendments. Hard copies of the Bill and the explanatory memorandum are available for members. The Committee will formally determine its position on each of the proposed amendments and each clause. If there are any Divisions, the Committee will divide as necessary. All decisions from the Committee's point of view will be final. That does not bind anybody when it comes to the debate in the Chamber.

It is anticipated that the Committee will conclude all formal deliberations at today's meeting. The Committee will then have a short meeting to agree its report on 8 February. I welcome to the meeting the following departmental officials, who are here to answer any questions that members may have: Caroline Gillan, the director of access, inclusion and well-being; and Alan Boyd, who is the head of the pupil behaviour management team. I appreciate that we have gone through these issues, but are there any brief comments that you want to make on the Bill or the proposed amendments?

Mrs Caroline Gillan (Department of Education): No, I am happy to wait until we go through each amendment and just comment on them as they arise.

The Chairperson (Mr Weir): OK. That is fine.

Clause 1 (Definition of “bullying”)

The Chairperson (Mr Weir): Clause 1 prescribes an inclusive definition of bullying. Previously, the Committee agreed informally to consider an amendment to clause 1(1) that would introduce some flexibility to the definition of bullying to try to cover the issue of repeated bullying. The proposed amendment states:

"bullying' includes (but is not limited to)".

Does the Department want to make any remarks on that?

Mrs Gillan: As we mentioned previously, we feel very strongly that this is not required, because "includes", in legal interpretation, means "is not limited to". We have consulted the Office of the Legislative Counsel (OLC), which has very strongly advised us that putting that amendment in will cast doubt where "includes" is used in other legislation; it could be implied that "includes" does not mean "is not limited to". The way to deal with this, if there is any lack of clarity, is through very clear guidance. In areas like child protection or pupil behaviour management, the schools tend to have the departmental guidance on their desks as they operate the policy, as opposed to necessarily going back to primary legislation. So we have strong concerns about putting that in, in terms of the impact on other legislation in Northern Ireland. Also, it is just not required.

The Chairperson (Mr Weir): OK. We are trying to find a way through this. A concern that was raised with us fairly consistently was that of the definition. There is obviously a specific reference to "repeated use". If that is not in any way qualified in what it can also include, I am not altogether sure that it simply includes repeated use. That wording sends out a signal that there can be a single one-off incident.

Mrs Gillan: And that is what we would deal with in the guidance. As we discussed last week, there will be circumstances where, because of the circumstances of an event or indeed the history or significance of it, a single event may be bullying. We can take that back, in developing the guidance, that we specifically want to deal with that point. Indeed, from doing a bit of research, I see that it is mentioned in some guidance in England etc. Not every event will be a single event of bullying — that is dealt with under the discipline policy — but we absolutely want to acknowledge that it does not necessarily require a repeated event, and we will deal with that in guidance. We can give that undertaking and assurance.

Mr Craig: Caroline, I just want to be absolutely sure about this. The guidance will need to be very clear and specific around this. Unfortunately, I must admit that I have come across cases where a one-off incident, because of the nature of it and the force used, went right up to the very last issue that you would try to implement around disciplinary procedures with children. It can happen; that is what I am saying, Caroline. It happens out there in the real world, so we need to be clear about that. If you write legislation that excludes from governors the final sanction, you have tied our hands.

Mrs Gillan: Obviously, you still have all the sanctions under your discipline policy for dealing with significant events. Without wanting to draft the guidance in our heads now, we see there being a substantial section on "What is bullying?". Obviously, it will outline the main understanding, but it must also go on to say, "However, this is not the only situation" and elaborate further. That will be a key component of the guidance.

The Chairperson (Mr Weir): Are there any other comments in that regard? Is there any wording that could be used that talks about the repeated use of something and then maybe explicitly references the legislation to also include individual or single cases?

Mrs Gillan: From reading some of the stuff, I know that we need to be very careful how we frame it. I think that we would rather talk to schools, pupils and stakeholders to see what those examples would be. As I have said, some events will be one-offs that should just be disciplined and should not be regarded —

The Chairperson (Mr Weir): I understand that.

Mrs Gillan: I worry about trying to draft something quickly, without having the benefit of discussions with schools to see what would be the most appropriate way to describe bullying and the examples that we would want to give them.

The Chairperson (Mr Weir): I appreciate what has been said by the draftsmen or draftspeople on that, but I am still not entirely convinced that "but is not limited to" will entirely throw up doubts in terms of inclusion, to be honest. It might be seen as a degree of reinforcement or tautology in that regard, but I do not see where it particularly undermines things.

Mrs Gillan: I can only pass on what the draftspeople say. That is how we draft legislation in Northern Ireland. When you start to clarify it in one piece of legislation, it might call into question the interpretation in other legislation where they do not feel the need to clarify it.

The Chairperson (Mr Weir): OK. I am in the hands of the Committee. What does the Committee want to do on this?

Mr Craig: I do not know, Chair. I am fearful of the message that will be sent out. Unfortunately, the interpretation of it will tie the hands of governors more than the reality of it. I think we have all seen examples of how that occurs in legislation.

Mr Lunn: Do you want us to flag up whether we intend to bring something privately?

The Chairperson (Mr Weir): It is entirely up to you in that regard, Trevor.

Mr Lunn: I will keep my powder dry, then.

The Chairperson (Mr Weir): OK. Reading between the lines, it may well be that you understand that side of things.

Mrs Overend: It would be helpful to know what the schools think. I appreciate what Caroline has said on the issue and what it is bringing out. Sometimes you just cannot tell whether it is bringing further implications on the school or what their consideration is. I do not know; it is a difficult decision.

Mrs Gillan: We will want to make it clear to schools that there is a risk, as we said before, that, if we go too far to say that it can be one-off events, we almost dilute the meaning of bullying and the long-term aspect of it, other than the very significant one-offs. That is why we would like to tease out with schools and stakeholders, including the Northern Ireland Commissioner for Children and Young People (NICCY) and the Children's Law Centre (CLC), as to how exactly they want it framed and the message that we want to put to schools and parents. I hope that that is helpful.

Mr Craig: Caroline, I am just going to give you an example, which was publicised widely across the airwaves. There was a bullying incident in a school — let us face it, there was physical contact; they were basically punching each other. There was one case that says that, ultimately, one punch can kill and, unfortunately, in this incident that is exactly what occurred. That has to bypass what is a repeated offence, because even the law is not going to see it that way.

Mrs Gillan: But remember that the sanctions for discipline and bullying are essentially the same, and the school will want to decide the sanction in the context of the case. It could be detention, suspension, expulsion or, obviously, in some cases, reporting to the police, so I do not think that anybody can escape that.

Mr Craig: Yes, Caroline, but the worry is that, if you place something in legislation — I see how these things happen — all of a sudden it will be the principal who will look at the legislation and go, "It is not a repeated offence; we cannot do that". We have to get some mechanism around —

Mrs Gillan: It could be dealt with under the discipline policy.

The Chairperson (Mr Weir): Yes, but whatever is there in terms of guidance or, indeed, other policies, I have some concerns that people will simply look at this and go, "Repeated use of" — well, it is not a repeated use" irrespective of what is in the guidance. There needs to be something in there. I appreciate what you have said in relation to that. Sorry, Jonathan.

Mr Craig: No, no. The Chair has got it absolutely right here. In those circumstances, the school has only one sanction, which is expulsion. The police and the law will take care of the rest of what occurred there. I can clearly see that, if there is something in there that says that it has to be a repeated offence, the principal will look at it and go, "Well, this is the first time that this individual has ever done anything, but look at the severity of what they have actually done".

Mrs Gillan: It may not be bullying; it could be a discipline issue. If there has been no history of engagement between the two pupils, it is absolutely a bullying issue that could be acted on.

Mr Craig: I agree with you: it can be or it cannot be, but ultimately I do not want someone sitting there thinking, "I cannot do this. I cannot give that sanction".

Mrs Gillan: It is not that this duty says, "I cannot do anything with this pupil": the discipline policy, the bullying policy and the pastoral care are the whole package. This is not the end of the story; this is only for these types of bullying issues in schools. The principal will not say, "It is not bullying, therefore I cannot discipline the pupil".

Mr Craig: The difficulty is, Caroline, that I have met every armchair lawyer in the country when it comes to these things. Trust me: there are a lot of educated people out there who will use legislation like this against you. I know how school governors think. In those circumstances, they will want to give the ultimate sanction, which is expulsion, but you do not want some armchair lawyer coming to you and saying, "Well, actually this legislation prohibits you from doing that".

Mr Newton: I just want to make a comment. The Committee, the Department and the Minister all know the position that we want to get to; it is just about the route that we travel to get to that position. Am I right, Chair, that we have to take our position today?

The Chairperson (Mr Weir): Yes, possibly. I will wait until other members have had their say. I have a wee bit of thought that something might be able to be done, but it will not be very specific.

Mr Rogers: You are very welcome. It is just what members have said earlier. Caroline, I remember that you mentioned the word "appropriate" in relation to this. Whether it is a discipline issue, bullying or maybe a case in a special school where the child has particular special educational needs, once an incident happens, people will go to the bullying legislation and see use of the word "repeated", but it might be the first time that this has happened in this special school. You talked about "appropriate": can you tease that out?

Mrs Gillan: The definition we are using here is not inclusive. The duty is on the board of governors to ensure that policies at the school are pursued and to determine measures. Once this is enacted, boards of governors will have to develop their bullying policies and the more detailed measures underneath them, so they will have thought of all these issues. They may say, "Right, in our school, we're aware of situations in the past that have caused problems", so they will be able to shape the policies and the appropriate preventative measures and sanctions that can be taken. Those will be consulted on with the pupils, teachers and parents. This legislation will not be in isolation, never mind our guidance.

I was flicking through a few anti-bullying policies last night. Some schools' policies are actually already very detailed about what they will do and how they will sanction bullying events in the school and who should be informed. It will be for the board of governors, taking into account the context of their school and pupils, to decide how they approach preventing and addressing bullying. They will have that flexibility.

Mr Rogers: I know it is the responsibility of the board of governors, but it is putting an awful onus on the board of governors to develop that. What guidance and support are they going to get from the Department or through in-service training? I do not think that this can be covered by one two-hour session by the Education Authority.

Mrs Gillan: Alan will be able to elaborate. When we say "guidance", we mean good, full guidance that is properly developed in conjunction with schools and stakeholders. We envisage using some sample anti-bullying policies and measures within those to give schools an idea. All schools already have an anti-bullying policy, and some are fulsome.

Alan, maybe you can give an idea of how we are thinking of approaching the guidance and training.

Mr Alan Boyd (Department of Education): In terms of guidance, as Caroline said, we recognise completely that we need to take in the views of governors, principals, staff and other stakeholders. In proceeding with the Bill, we have not had time to undertake that exercise, so we are aware that that is lacking. Until we get that information, we do not accurately understand what concerns governors will have and what training they believe will be appropriate. We are happy to undertake and have undertaken that we will ensure that the guidance addresses all the concerns that they have, even if that takes longer to develop. As far as we are concerned, that is an essential element of the process before we can bring the Bill into effect. What form that training might be will become apparent once we start to understand what those concerns are and not before, unfortunately. As policy officials, we cannot have a detailed understanding of what those practical, on-the-ground situations are like and what concerns they may give rise to. So we have not thought it through. We are acutely aware that that is a hole that needs to be filled as we work forward from the Bill.

Mr Rogers: Could we get into a situation where a school develops its own anti-bullying policy out of this, and, once an incident happens — it does not need to be a repeated incident — they see it as a bullying incident? Could we get into a situation where the legislation says "repeated bullying" and a school is saying the first hit, for want of a better word, is bullying?

Mrs Gillan: As we said, the legislation is uses "'bullying' includes"; the legislation does not prevent one-off incidents. You would never get a situation, even in the legislation as it stands, in which schools would be precluded from developing policies that recognised that there can be other scenarios that they view as bullying. Schools are absolutely entitled to do that. What I am saying is that the guidance will assist schools in developing what those other events or situations might be or what they might want to take into account.

To assure you, the elements here are the key usual elements of bullying, but that is not to say that bullying cannot take place that does not exactly fit in with what we have put on the page. That is fine; the legislation gives the flexibility to schools to recognise other instances as they may wish to develop in their policy and measures. As Alan said, the guidance will assist them in that.

As you said before, we all want the same thing: we want to ensure that schools are able to tackle bullying and that pupils are protected from bullying, regardless of how it emanates. We are all on the same page. We just feel that we are not restricting ourselves to the definition on the page, but I appreciate that there are concerns.

Mr Hazzard: My point is about the repetition thing. Are we conflating two issues? I am not, of course, taking away from the fact that a one-off incident can be very severe, but I caution that there may be certain unintended consequences from classing one-off incidents as bullying.

The Chairperson (Mr Weir): The issue is that we want to make it fairly clear that it can be a one-off. My concern is that simply saying "includes ... repeated" does not make it clear enough that it can be bullying. That is the concern. I will take that as a comment.

Mr Lunn: We are in danger of taking an extreme example of a one-off incident, which could be bullying or, frankly, attempted murder, and using that as our benchmark, when most one-off incidents will be relatively minor. If they were repeated over a period, they would constitute bullying, but, in themselves, they are just one-offs. Did I hear you right, Caroline? Did you say that the legislation as it is proposed does not preclude one-off incidents from being treated as bullying incidents?

Mrs Gillan: No.

Mr Lunn: I do not know how many times I have read it, but I have not come to that conclusion.

Mrs Gillan: It is around that definition — "'bullying' includes" — but that is not the end of the story. It includes those elements, but, by implication, it can include other elements. That is maybe where the nub of the issue is.

Mr Lunn: I was as concerned about the use of the word "repeated" as anybody else right from the start. Frankly, the more I think about it, the more I do not know what amendment the Committee could come up with.

The Chairperson (Mr Weir): I am going to make a suggestion that might not entirely find favour with the Department but may, at least, try to find some way through. We have an amendment here that says "not limited to", which I appreciate is not ideal. I suggest to the Committee that we agree that amendment, but suggest that the Department finds its own amendment. I would like to see something in the legislation. If the Department was to come up with a better formula, I would be happy, on behalf of the Committee, not to move our amendment and to accept the departmental amendment. That may be the way to do it. To entirely leave it with what is there in terms of the advice is a little weak: I want to see something in the legislation that governs the situation.

Mrs Overend: I appreciate what you are saying, Chair. Something just came to me, because there has been debate about the words:

"For the purposes of subsection (2)(a), motivation may include".

We know already, from the explanation that has been there, that that could include others and is not an exhaustive list. If you changed it to "may include", would that be something similar?

The Chairperson (Mr Weir): The only slight complication is that I am not sure that it clarifies the issue greatly, and I have problems with what is in the later bit. I think that there is a better way of dealing with it.

Mrs Overend: That is fair enough. It was just about a uniformity of language.

The Chairperson (Mr Weir): I suggest that, without prejudice, we put that forward very much with a plea to the Department. We need something in the Bill: if you can find a more appropriate amendment, I would be happy not to move that.

Mrs Gillan: Do you want the amendment to deal with the fact that you want to emphasise that there are situations other than this, or is it that you are purely concerned about repetition versus single act?

The Chairperson (Mr Weir): It is principally about repetition as opposed to a single act. There should be something around that. As you say, this is probably a situation in which we are all trying to arrive at the same destination. I am just not sure that it is satisfactory to not have anything in the legislation, but we are not doctrinaire on the wording.

Ms Maeve McLaughlin: I am mindful of the research that the Committee has received. The academic practice is to recognise repetition, but, increasingly, the practice or the trend is a single act. The approach that the Twenty-six Counties is taking to this is interesting: repetition is a criterion, but there is a single offence in relation to some acts, in particular cyberbullying. I am with the Chair on this: the Department should explore something that deals with it. The obvious concern is that repetition may be an obstacle in deciding where these acts start and how we tease that out. However, it is also worth reflecting on the academic trend to view bullying as repetition but the practice is increasingly a single act.

Mrs Gillan: We will definitely do that. My concern is whether we can capture adequately in legislation a single act of that nature while not wanting to capture every event in the school. Guidance allows you to develop that in more detail and have examples, whereas legislation requires you to try to capture it in a single sentence. However, we will certainly explore that. We will bring it back to the Minister.

Mr Rogers: Caroline, I have a very small point that you may be able to clarify for me. The first single act should really be caught by the discipline policy; is that right?

Mrs Gillan: Yes.

The Chairperson (Mr Weir): Trevor, did you want to add to that?

Mr Lunn: I wanted to talk about a different aspect of clause 1.

The Chairperson (Mr Weir): OK. We will come back to that. Are members agreed with that as a potential way forward? Are members content with the amendments on the understanding of what we have said?

Members indicated assent.

The Chairperson (Mr Weir): We then move to point 1.5. Obviously, the Committee had —

Mr Lunn: We kind of skated past point 1.1, which is on the rights or wrongs of including special schools in the legislation. It is yes or no really. The departmental response appears to just say that it would be wrong to exclude them. That is the argument really, isn't it? Some of us think that they should be excluded, and the Department thinks that they should not be. The rationale for excluding them is that teachers may be able to have a much closer relationship with pupils who have behavioural problems and deal with those. What might be perceived as bullying in a normal situation is completely different in a special school or a special unit. I am not speaking for anybody else here, but there is a case for special schools not being included in this legislation at all. What is the Department's view on that? It is not good enough just to say, "We disagree".

Mrs Gillan: I think that, the last time that I was here, I elaborated a bit more to capture the key points. Perhaps Alan wants to reiterate that.

Mr Boyd: In essence, the argument is that there are more scenarios in which special schools — it is not limited to special schools — can ensure, by virtue of the board of governors still having flexibility over the policies and the detailed measures that they put in place, that those give additional flexibility where they believe it is required, whether that is based on the specific needs of the child, where they are in the special needs code or other wider circumstances that the school feels are pertinent. They can then choose to graduate the severity of any sanction that they apply. It was touched on the last day that, in special schools, the ability to determine intent is very often lacking. That will automatically remove the incident from being classed as bullying under the current definition. For those incidences where the definition still fits, it is appropriate that schools record them so that they can monitor their own performance and see if there are any underlying issues in the school. However, they have flexibility in how they respond to that.

Mr Lunn: You are saying that you would like the legislation to apply to all schools but the board of governors of a special school will have some flexibility in how they draw up their anti-bullying policy and in how they apply the rules. Does the Department intend to offer any guidance to special schools in that regard?

Mrs Gillan: When engaging with stakeholders, it is important that we speak to all the sectors. We will undertake to speak to special schools and mainstream schools with learning support centres to see what particular aspects they want to see addressed in the guidance —

The Chairperson (Mr Weir): Sorry, Caroline, I appreciate the strength of the argument that you do not want complete exclusion of schools but want to retain a reasonable level of flexibility, particularly in certain circumstances and as regards intent. If there was a debate, could Mr Lunn or any other Committee member make an intervention on the Minister so that he could give that assurance on the Floor?

Mrs Gillan: Absolutely. I am sure he would be content to do that.

Mr Lunn: I just wonder what assurance he would give and whether this means the Department will draw up guidelines specifically applicable to special schools to advise them how to interpret the law. To start with, the same law will apply to them.

Mrs Gillan: I think there will be advice on the issues they want to take into account when developing their policies and their measures. We have to acknowledge, in all of this, that it is about protecting pupils. We want to give pupils in special schools and learning support centres the same protection as pupils in other schools. That said, we understand that it needs to be done in a way that is workable. We will ensure that the Minister touches on that aspect in the debate.

Mr Lunn: So will we. *[Laughter.]*

The Chairperson (Mr Weir): OK. I just want to touch on one other aspect of clause 1, and then I will open it up for members as regards any other issues with clause 1.

At 1.5 in the table, there is an amendment from the Department that was largely technical in its nature: informally, the Committee had agreed to support this. I wonder if the Department has any final comments on that.

Mr Boyd: Our position is still that this is a technical amendment with no material policy impact.

The Chairperson (Mr Weir): Are members content with the proposed amendment?

Members indicated assent.

The Committee Clerk: By way of tactics for the Committee on the earlier amendment about "but is not limited to", would the Committee be content to support the Department's amendment, as members have just indicated, but then table an amendment to the amendment? I have taken advice from the Bill Office, and that is probably the best way.

The Chairperson (Mr Weir): OK. We will do that. On that basis, if there is an amendment from the Department, I think we would be content to do that. OK.

Does anybody have any other issues they want to raise on clause 1?

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

Clause 2 (Duty of Board of Governors to secure measures to prevent bullying)

The Chairperson (Mr Weir): Point 2.8 in your tabled papers relates to clause 2 and requires that the board of governors review anti-bullying measures at least once every 5 years. Has the Department any comments on that?

Mrs Gillan: The Minister is content to support an amendment of that nature. I just wonder if the actual wording of "no more than" could be formalised in legalese — for example, "at intervals not exceeding". I do not know what the appropriate drafting would be.

The Chairperson (Mr Weir): That came from the Bill Office, so I assume that is the wording. We can go back —

Mrs Gillan: Yes, but the Minister is supportive of that requirement.

The Committee Clerk: Can the Clerk take it that the Committee supports the amendment if the wording is slightly different but with the same effect as previously?

Mr Lunn: I am a bit behind the curve here. Which amendment are we talking about?

The Chairperson (Mr Weir): It is in the tabled papers. The amendment is:

"Clause 2, page 2

Leave out line 22 and insert —

'(i) at intervals of no more than 5 years; and'".

Mr Craig: The only query that I have — I have wondered about this — is why the period of five years was chosen. The life of a board of governors is actually four years because they are tied in with local government, which has a four-year period.

Mrs Gillan: Yesterday, we discussed four or five years. We highlighted the four-year lifespan. Very often, boards of governors review it every two years, but we felt that, absolutely, for those who are not being proactive, we would not want it to drift on. I have a feeling that we talked about four or five years.

Mr Craig: Given the lifespan of a board of governors, it should be four.

The Chairperson (Mr Weir): Would the Committee be happy if the lifespan were four years?

Mr Newton: The discussion that Sandra and I had across the table yesterday was that it should be "not more than".

The Chairperson (Mr Weir): Yes. It is "not exceed" or "not more than". We can get the exact wording. I am asking whether the timescale should be four years.

Mr Newton: Yes. Four years is sensible.

The Chairperson (Mr Weir): OK. With that slight change, are members content with that amendment?

Members indicated assent.

The Chairperson (Mr Weir): The next area that we have flagged up is at 2.11. We had informally agreed to consider an amendment in respect of cyberbullying. Here, in the tabled papers, you have two versions: one that would extend the school's responsibilities generally and the other refers only to electronic communications. You could go for only one amendment at most. You may not actually want either of them. Maybe we could tweak what is there slightly. First of all, I invite the Department to comment on both of them.

Mrs Gillan: The Minister has indicated that he would be extremely concerned about imposing an additional duty on boards of governors in that way. From our perspective and having done some brief research last night on the duties imposed on schools on cyberbullying, we feel that there is a range of varieties and indeed a lot of research papers that debate the effectiveness or otherwise of the legal liabilities of boards of governors. If the Committee were to put forward an additional duty which, let us face it, is on a group of people, not necessarily institutions, without being absolutely clear what the legal implications are, the Minister would have great concerns.

We are aware that schools are looking for clarity and guidance on cyberbullying. As we have said in previous evidence, we have commissioned the Anti-Bullying Forum to bring forward guidance in the immediate term. We are also working with the Safeguarding Board for Northern Ireland (SBNI) to look at the e-safety strategy. We feel that the appropriate thing to do would be to see how that additional guidance is working and whether that assists schools before we move to looking at legislation.

Even in looking at legislation, we would want to research what happens elsewhere, the implications for schools and how it is working, before drafting up and saying, "Here is the policy and the additional duties that we want to put on schools", and saying to drafters, "Here is what we have decided we want in consultation with various stakeholders", and then draft legal duties to respond to that, as opposed to, in this circumstance, putting legal duties down and be faced with having to do, if you like, a post hoc rationalisation of what the implications will actually be. I know that the Minister is extremely concerned that we do not legislate for duties of that nature on boards of governors in that way.

The Chairperson (Mr Weir): Are there any comments? Do not all shout at once.

Mr Lunn: I hear what Caroline says. I think that the first amendment that is suggested with the wording:

"is likely to have a detrimental effect"

should keep it fairly simple. It is pretty much down the road of what we wanted to see.

The Chairperson (Mr Weir): It continues: "on a pupil's education". The only thing about the reference to a pupil's education is how widely drawn that is.

Mr Lunn: That is what schools do. I do not mean to be facetious.

The Chairperson (Mr Weir): I know. At least, that is what the intention of the school is.

Mr Lunn: We are not trying to be psychologists here, but we are trying to ensure that pupils can enjoy their education unhindered. That indicates something that has a detrimental effect on a child's education, which is what the rest of the Bill does too.

The Chairperson (Mr Weir): I wonder whether "a detrimental effect on a pupil's education" is a bit widely drawn. I am thinking off the top of my head. There is a reference in clause 2(1)(b)(i) to:

"on the premises of the school during the school day".

I throw this out as a suggestion: what about "or having a detrimental impact on the school day"?

Mrs Gillan: Again, how far does the Committee want schools to get into situations and events that arise entirely outside the school's control?

The Chairperson (Mr Weir): As I said, Caroline, I was speaking off the top of my head, but we appreciate that there can be a general impact from cyberbullying that occurs somewhere else. I appreciate that it is difficult for the school to deal with that. However, you will have a situation in which something will have happened overnight and it is having an impact. It may not have occurred within the school, but it is having an impact in the school during the school day. It is about getting some level of that captured.

Mrs Gillan: Yes, but I believe that the Committee is introducing a duty on boards of governors without having a clear idea of what it reasonably expects boards of governors to do in those situations. It is wide open. What would you expect a school to do? You are clarifying there that the school and board of governors have a duty to put in place measures to address bullying in any scenario where it has an impact on the school day. You will have a situation that happens in the holidays, for instance. Do you want the policy and measures to, somehow, reach into monitoring Facebook accounts?

The Chairperson (Mr Weir): Presumably, if that is having an impact on what is happening from 9.00 am to 3.30 pm or whatever it is, it is relevant.

Mrs Gillan: Are we saying that we will ask the schools to say, "During holiday times or during weekends"? I do not believe that we can draft off the top of our head or, indeed, say, "Surely, this might mean that". I do not think that in this situation, where you have legal liabilities on a group of governors, we can impose additional duties in this way. I would much rather have a more considered process and legal advice.

The Chairperson (Mr Weir): I understand that. There is also the argument on balance, which I appreciate is the two sides of the one coin. The child has to get to and from school. Obviously, you want to prevent a situation in which the bully is waiting outside the school gates. On the other hand, that could be fairly loosely defined as well.

Mrs Gillan: The pupil has to go to and from school. There is a finite element to that journey. Translink is involved; there is guidance in place around bullying on buses. It is a much more definable situation and the pupil has no choice with regard to travelling to and from the school. If you were getting into a situation involving any other bullying event or one-off event that has a detrimental effect — I think of our previous conversation — I would not know off the top of my head what that might mean, nor would I want to guess what it might mean. Obviously, it would be for a court to decide. We would have the Committee imposing an additional duty on boards of governors and, then, obviously, the Department having to take legal advice to see what that means and then, as I said, post hoc, trying to give some advice. Certainly, in this situation, I would much rather that we had a considered view and proper research and consideration.

The Chairperson (Mr Weir): A number of members want to speak. I am not sure whether they are comments are questions.

Mr Hazzard: The warning from the Department is quite stark. I know that we want to get something in around cyberbullying or something like that, but I fear what the implications will be for boards of governors. At times, we have raised issues on the capacity and ability of boards of governors to tackle issues. We may be overstepping the mark here and setting down a duty that they will not be able to meet.

The Chairperson (Mr Weir): There is something that I want to pick up. Two alternative versions were drafted. I appreciate what the Department has said about a duty. It is clear that the amendment at 2(1)(b)(iv), which simply talks about where they must do things, is imposing a duty. The second draft amendment, which is the addition of subsection (1A), simply says:

"may consider measures to be taken."

That would give them a power to do things but not necessarily impose a duty. Would that alternative wording be an option?

Mrs Gillan: Again, I feel, as with everything in this arena, we should look at developing the guidance, seeing how that goes and engaging on it before we move to deciding whether we need to legislate. Even in that, "measures to be taken" can be preventative, but it is also about addressing it. Preventing bullying, in one situation, also means intervening in those situations. What is:

"reasonably likely to have a detrimental effect"?

What is "a detrimental effect"? The Department honestly feels that drafting in this way, to impose additional duties, is not the right way to do it. I know that I have harped on about it.

The Chairperson (Mr Weir): Sorry, with respect, "may consider measures" is not actually imposing an additional duty; it is a permission, which is a different thing. It would be a stronger argument if it said, "must consider measures".

Mrs Gillan: In a situation where you have a board of governors that decides not to consider the measures, is there an issue there?

The Chairperson (Mr Weir): Surely, if you have given somebody a power and they do not exercise it, it is within their power not to actually do something. That is the nature of it.

Mrs Overend: We have talked about this over and over, have we not? I know that schools are calling out for guidance on cyberbullying, and they are looking to the Bill to see where the responsibilities start and finish. The Bill has to be clear. We have talked about how the impact of bullying that might start at night-time or the weekend affects the child in school. I also relate that thought back to anything else that might happen a child at night or at the weekend. For instance, if the parents split up and there is a family drama, it will impact on a child's ability to participate in school work. Surely, a school deals with that.

Mrs Gillan: Absolutely, through pastoral care. What we have said in previous evidence is that, if the school is aware of incidents that take place through whatever means, if the parents inform the school, the school will, from its pastoral care perspective, take that into account. Also, from the discipline perspective, it will take that into account in practice in monitoring situations or relationships between pupils. That already happens, and it can be clarified further.

Mrs Overend: That is what I am trying to get at. The school does not need to fix what is happening outside school, but it needs to help the children. If one or two children are involved in that bullying incident, the school must deal with the children in school to fix the environment in the school. Maybe it would help if we had sight of the legislation or guidelines with regard to pastoral care, so that we can see how it impacts on cyberbullying incidents and whether it includes that, so that we do not need to amend this because we know it includes cyberbullying and the child can contribute properly at school. Can we have that?

Mrs Gillan: That is the reality of the pastoral care scenario, and schools, in operating discipline and general school life, take into account information that is brought to them about other factors. We are reviewing the pastoral care guidance, which is much more about child protection, at the moment. There is promoting positive behaviour guidance, dating from 2003, that probably needs to be updated. As it was written in 2003, it probably does not explicitly refer to cyberbullying as such. We can certainly provide copies of that and references to the current duties in relation to the wider welfare of pupils.

Mrs Overend: If we had an oral commitment from the Minister that that guidance would be updated, that would suffice.

Mrs Gillan: I think that we can deal with it. We can deal with precisely those issues in this bullying guidance. We can make sure that we cross-reference all the duties that schools have on the welfare and safeguarding of pupils. We can elaborate that clearly around the information that may come to them about things that are not necessarily happening in school but which, as you say, affect the operation of the school and the school day.

Mr Lunn: The Bill, as it stands, subject to bits and pieces of amendment, deals adequately with what we are trying to do, except it ignores possibly the biggest and most harmful form of bullying, outside of physical violence, that there is. I would like something in place that allows principals, in particular, but also boards of governors to set standards and do what they already do anyway. I will not go on about drawers full of phones again, but that is the kind of thing that I mean. It is just as likely — in fact, far more likely — to have a detrimental effect. I know that you say that you are uncomfortable with this. It is the usual argument — you could introduce guidance and so on — but I really would like this to be in the Bill.

The second amendment is so woolly, frankly, that a board of governors could probably do that anyway, even without an anti-bullying Bill. It is framed in such a way as to be completely ineffective and harmless. The first one is far more meaningful. It may not be perfect and maybe we need to tweak it a bit more, but something like, "likely to have a detrimental effect on a child's education due to circumstances linked with the school but outside school hours or lawful control" seems perfectly valid to me. Somebody quoted a figure of 16% for such bullying incidents, but that is widely ridiculed. It is far more serious than that, and I do not see how we can ignore it.

Mrs Gillan: You are saying that you want the first amendment to say that boards of governors "must" determine measures to be taken at the school with a view to preventing bullying involving their pupils:

"in circumstances other than those listed".

That would mean that a board of governors "must" have measures in place in circumstances including those when children are not at school. Without elaborating on what the measures might be, that is extremely wide, and it is not even caveated by "reasonable". Any court or board of governors would blanch at that very wide duty.

Mr Lunn: I did not say that it was perfect. I love the word, "reasonable" in a lot of circumstances. You could just say, "in reasonable circumstances". The more you water it down —

Mrs Gillan: As part of the preventative education element of the curriculum, schools already do a lot to educate pupils about staying safe online, protecting themselves and respecting healthy relationships. There is a lot that schools are good at doing that impacts not only on how pupils behave at school but on how they behave in their daily life. The Minister is concerned that we are expecting boards of governors to police and ensure the safety of pupils even in situations that are outside their reach. Schools do a great job and already, in circumstances in which it is practical to do so, intervene when they are aware of issues affecting the welfare of a pupil, but inserting a duty of that nature increases their responsibilities to such an extent that the Committee cannot today be sure where they end. We will find out only when the first case reaches court: for example, when wee Jimmy has been bullied at a youth club on Saturday night, both pupils go to the same school and the school is asked what it has done about that. That seems frivolous, I know, but we have strong concerns about inserting a duty of that nature without really knowing the beginning and end of it.

Mr Lunn: Is the Department comfortable with principals already, in effect, exceeding their authority by intervening in that sort of situation? Say, for example, that a child sitting in class bursts into tears, the teacher asks what is wrong, and the child replies, "Look at my phone". The teacher sees that half a dozen messages of a disgraceful nature were sent the night before by another pupil who happens to be sitting in the same class. We all know how a principal would deal with that, but, at the moment, they act informally — off their own bat. That is why some of us would like something in the Bill to at least strengthen their hand.

The Chairperson (Mr Weir): Without arguing for or against it, would the second amendment not provide a degree of cover for that situation? I appreciate what you said about it being the woollier of the two.

Mr Lunn: It is woolly. You can either strengthen the second one or tone down the first. The proper wording is in there somewhere.

Mr Craig: Not for the first time, I find myself in agreement with Trevor on this. It is probably the biggest bugbear that principals and boards of governors deal with today. I will not mention any names, but — trust me — my daughter could give you 20 names, half of which I have never heard tell of. It is a major issue for schools. If we miss addressing in some way, shape or form what is now the biggest problem for schools, we will have failed. We cannot ignore it. I am inclined to go with the second amendment. The other difficulty — I know that the police struggle with this — is how to get the definitive evidence to prosecute. Schools are no different. How do they get the information that allows them to go through the sanction process? It is a lot more difficult than you think. You can even get printouts, but the trouble is that, if something is deleted, it is gone from the system, and then you struggle.

Mrs Gillan: Therein lies the problem. You have talked about the problems that the police have, but they have much wider powers to confiscate property etc. How do you expect a school to deal with the issue when, as you said, it is very difficult to get the information?

Mr Craig: It is, but — I have to be honest — schools do not ignore the situation at present. Trevor is 100% right: we are flying by the seat of our pants, if the truth be told. There is nothing in the Bill to cover what school principals and governors are doing. That is why the second amendment is probably the one to go with. I could not care less about whether it needs to be beefed up — maybe it should be beefed up slightly — but we need to put something in the Bill to cover what schools are doing.

The Chairperson (Mr Weir): Irrespective of whether the wording of an amendment was not perfect, if it was agreed by the Committee and the House, there would be an opportunity, albeit not for the Committee, to tweak it at Consideration Stage.

Mr Lunn: I do not want to disturb the camaraderie — it is nice that Jonathan agrees with me — but the question is about evidence. Cyberbullying is where you are most likely to have firm evidence. When it is stored in a cloud, it is there for all time. Perhaps that has made it easier to prove cyberbullying than some other forms of bullying.

Mr Newton: I very much understand where Caroline and Alan are coming from. Caroline talked about taking a considered view and doing a lot more research. There is a coming together. There is recognition that it is a major problem. At the moment, as Trevor said, principals are taking action, but they do so in a vacuum, and we have to take decisions to address the issue in a bit of a vacuum as well. We do not know what support you will finally offer principals and boards of governors and what training and information you will support them with. The Committee's desire is to see something in the Bill, and we can work together to ensure that that is the case.

Mr Hazzard: I wonder what protection the second amendment adds to what is already there. It says that a board of governors "may consider measures", but I am sure that they have that power already. For me, the first amendment is definitely out. It would mean that, if someone was bullied on holiday and was still affected by it after going back to school, the board of governors would be liable.

The Chairperson (Mr Weir): Possibly. That would be more accurate for the first amendment than the second because there is a duty —

Mr Hazzard: Yes, that is what I am saying. The first one, for me, is definitely out, on the grounds that it leaves the board of governors liable for absolutely everything. It would place a duty on the board of governors that does not apply to parents or anybody else. To me, that is a crazy situation. I do not know what the second amendment would actually do. This is legislation: what is the point in putting something in if it is not going to —

Mr Lunn: It is somewhere between the two.

Mrs Gillan: The second one asks a board of governors to take measures against bullying

"where that bullying is reasonably likely to have a detrimental impact".

It does not have to have a detrimental impact. Is it only if it is "reasonably likely" to?

Mr Hazzard: As things stand, can a board of governors "consider measures" anyway?

Mrs Gillan: At the moment, it is the duty of the board of governors to safeguard and promote the welfare of pupils attending the school at all times. Clause 2 refers to "on the premises" and "in the lawful control of". However, under wider safeguarding and the general duty of care, boards of governors take into account situations where, if they have concerns about the safety or welfare of a child, they must act under child protection. Some bullying incidents that take place outside are so severe that they merit child protection arrangements, and the police have to be involved in some circumstances. My understanding is that, at the moment, schools take into account the less severe incidents when providing support to the pupil who is the victim, but they are also aware of the wider discipline situation and the general operation of the school.

As I said before, we have commissioned the Anti-Bullying Forum to produce specific guidance on cyberbullying, and that is being drafted. The forum is made up of a wide range of stakeholders. I would like to see that.

The Chairperson (Mr Weir): You mentioned "reasonably likely". The Department will be wary of any amendment in this area, but, if it was akin to the second amendment and included "reasonably likely", would that be a better form of words?

Mrs Gillan: My reading — I saw the amendments only on walking in here today — is that the second amendment is about measures that may help to reduce bullying by means of electronic communication:

"where that bullying is reasonably likely to have a detrimental effect".

I ask why "reasonably likely" is there.

The Committee Clerk: The Committee's thinking on this was that, when it comes to cyber communication, the board of governors has the power reasonably to protect pupils from actions that might have a detrimental impact. The idea is that a board of governors does not have to wait until there is a detrimental impact but should "consider measures". Members introduced some anecdotal evidence about what schools do currently, and the feeling was that this would give them some comfort and record the Committee's expectation.

The Chairperson (Mr Weir): Also, prevention is better than cure.

Mrs Gillan: If you want to introduce some sort of reasonableness —

The Chairperson (Mr Weir): This is without prejudice to your undying opposition to any amendment.

Mrs Gillan: This is without prejudice to our position. Perhaps this would be better: "The board of governors of a grant-aided school may, to such extent as is reasonable, consider measures".

Mr Lunn: That would be an improvement.

Mrs Gillan: What you are trying to capture there is that you want boards of governors only to do something that is reasonable.

Mr Lunn: Would we leave out the other "reasonably"?

Mrs Gillan: Yes, I think so.

The Chairperson (Mr Weir): So we now have, "may, to such extent as is reasonable, consider measures".

Mr Lunn: Chair, I think that Caroline means to leave out the other "reasonably".

Mrs Gillan: Yes, the one after "that bullying", but you can take advice from your drafters.

Mr Lunn: Putting "reasonably" there has no effect at all.

Mrs Gillan: You could leave it in. You want to capture the reasonableness, but I do not know that putting it there does that.

The Chairperson (Mr Weir): I understand, and I can see both points of view. Adding "reasonably likely" might confuse things. The flip side of the coin is that it might be slightly preventative, and I can see the merit in that. OK, members, we will call it the Gillan amendment. *[Laughter.]*

Mrs Gillan: The Minister will not be happy. *[Laughter.]*

The Chairperson (Mr Weir): I was going to tell you not to worry, Caroline, because there will be nine new Departments, and you will have plenty of opportunities in future. *[Laughter.]* The wording that you suggest is sensible, and everyone accepts it. Are members content to drop the second "reasonably"?

Members indicated assent.

Mrs Gillan: The Department does not agree with these amendments —

Mr Newton: You want that on the record.

Mrs Gillan: The second amendment states:

"consider measures to be taken by the school ... or other persons"

Boards of governors only have control over measures to be taken by the school and the staff; I do not know who those "other persons" would be. When we come to interpret all this, people will ask the same question.

Mr Rogers: That comes from clause 2(1)(b):

"whether by the Board of Governors, the staff of the school or other persons".

Mrs Gillan: So it does — my mistake. I wonder what that means. *[Laughter.]*

The Chairperson (Mr Weir): We may be confusing, but at least we are consistently confusing.

Mrs Gillan: We will work that out.

The Chairperson (Mr Weir): Maybe, as a parting gift, Seán will get the award for being eagle-eyed.

There are two questions: whether we agree to table an amendment and, if we do, which of the two versions we choose.

Are members agreed that we table an amendment?

Members indicated assent.

The Chairperson (Mr Weir): Chris, do you want to be recorded as dissenting?

Mr Hazzard: Yes.

The Chairperson (Mr Weir): We have the slightly reworded second amendment or the first amendment, which begins, "in circumstances other". We have agreed to table one of the two at Consideration Stage, and it may have to be tweaked. Although we have agreed, I have to put the Question on the amendment formally. May I have a show of hands so that it can be recorded? Sorry —

The Committee Clerk: If I understand it correctly, Chair, the Committee is considering the first amendment on the list, as that is the one that cuts first on the clause. The Committee is then being asked to indicate whether Aye, it wants to adopt that amendment; No, it does not; or to abstain.

The Chairperson (Mr Weir): The two amendments are exclusive of each another, so I will ask, first, whether members are in favour of the first amendment, which would insert sub-paragraph (iv).

Members indicated dissent.

The Chairperson (Mr Weir): Nobody is in favour of that. Next is the second potential amendment to clause 2.

Mr Lunn: Is that amended as suggested?

The Chairperson (Mr Weir): It has been amended by adding "to such extent as is reasonable" and leaving out the second "reasonably". Any further changes will probably have to be made at Further Consideration Stage, unless there is a specific amendment that you want to make now.

Mr Lunn: No, not on the hoof like this.

The Chairperson (Mr Weir): I understand that.

The Committee Clerk: If members agree the amendment on a without prejudice basis now, I will have the revised wording by the time we come to agree the report on Monday.

The Chairperson (Mr Weir): In principle and without prejudice, are members in favour of the second amendment?

Mr Newton: In principle and without prejudice.

The Chairperson (Mr Weir): I need a show of hands.

Mrs Overend: I will abstain because I would like to see the information that I referred to earlier.

Mr Rogers: Is this based on what we will see on Monday?

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

The Chairperson (Mr Weir): Are members in favour of the second amendment?

Question put.

The Committee divided: Ayes 6; Noes 2; Abstentions 1.

AYES

Mr Craig, Mr Lunn, Mr McCausland, Mr Newton, Mr Rogers, Mr Weir.

NOES

Mr Hazzard, Ms Maeve McLaughlin.

ABSTENTIONS

Mrs Overend.

Question accordingly agreed to.

The Chairperson (Mr Weir): It is probably just as well that we do not have more amendments. Does anybody have any final remarks on clause 2?

Mr Rogers: It is a very small point, Caroline. The clause refers to reviewing policies within five years: why do we not have something there to ensure that it is part of the school self-evaluation process?

Mrs Gillan: The ETI would expect to see evaluation and for it to be tested.

Mr Rogers: In the school policy.

Mrs Gillan: In everything that schools should be doing for self-evaluation. It covers everything that they do and all their policies. John Anderson said that, when the ETI inspects schools, it asks them to fill in a questionnaire about all aspects of the school. Very often, those schools use the questionnaire even when they are not being inspected as a mechanism or tool for self-evaluation. That is good practice generally.

Mr Rogers: Will that be addressed in the guidance in some way or other?

Mrs Gillan: Yes.

Mr Rogers: That is fine.

The Chairperson (Mr Weir): We have dealt with clause 2.

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

Clause 3 (Duty to keep a record of incidents of bullying)

The Chairperson (Mr Weir): Clause 3 has a table of motivations. Concerns were raised about the list of 10 motivations, such as what should be added and whether it is the right list. Caroline, you specifically referred to one motivation that had been omitted. There are a couple of possible amendments, but they are mutually exclusive. The first amendment would allow the Department to add to those 10 motivations by way of an order. The second amendment would put a requirement on the Department to bring forward regulations listing the motivations. Do you want to respond?

Mrs Gillan: The Minister's position is that we would not support any amendments to clause 3. The reason for the list, non-exhaustive as it is, being there is that the clause is about ensuring that schools keep a proper record, including the circumstances of the bullying and the motivation. The reason for the motivations being there is that it gives schools a flavour of whether there are any issues in the school that need to be addressed. We did not have to include a list, but we thought that it would be helpful to give schools an idea of what we mean when we talk about motivations. We have been criticised elsewhere for not putting stuff in the Bill, so we thought that we would try to be helpful about the type of issues, but, in doing so, we are conscious that a lot of stakeholders want their identity or motivation to appear. We felt that the clearest and fairest way to deal with that was to look to the section 75 groups and any other legislation that specifically has protected elements. That is why it is there.

Our fear about putting too much emphasis on the list and getting too hung up about it is that, if you want us to do particular regulations or expect the list to be updated, that could send a message out to schools that that is the list, that only motivations on the list are important and that, if you are not on the list, you are somehow of less importance or, indeed, cannot be counted. I come back yet again to the guidance. It will emphasise that those are some motivations but that there may be others to do with identity and other aspects. Our fear is that the Committee, by proposing these amendments, almost elevates the list to something that it is not designed to be.

The Chairperson (Mr Weir): Caroline, to play devil's advocate, the counterargument is twofold. First, I find it difficult to accept that we are elevating it. If you are saying that, although the list of 10 is boldly in the legislation but that, by making it by way of regulations, we are somehow raising it to something of greater significance, that is a little counter-intuitive, to put it mildly. Secondly, we had quite a few — I would not say controversy — submissions in which people said things like, "This is worded wrongly. This should be included in the list". As I said, while I appreciate that this is largely derived from section 75, some things on the list are moveable. I appreciate that the list of 10 is preceded by "may include", but, if you want to add to it in the future, primary legislation would be required.

Mrs Gillan: We feel that, because it is not exhaustive, schools have the freedom to identify other motivating factors, and we will assist with that in the guidance.

The Chairperson (Mr Weir): My concern is that, if you are given a checklist of 10, but you may include anything else, people will automatically look to the checklist as being comprehensive, and people with different attitudes take different views. There are things that are unforeseeable now, but you may, two years down the line, really want them on the list. Regulations give a little more flexibility to deal with future developments.

Mrs Gillan: The ultimate flexibility is there at the moment. Anything unforeseeable can be listed as a motivating factor for a school. Especially with the second amendment to clause 3, if the Department is to make regulations about motivating factors, we will have to consult, look to stakeholders and ensure that we have a full list, which would not be possible. Other motivating factors will always come along, we would then come to the Committee and spend time looking at them, and you would take evidence. This list, however, is not the end of the story anyway, and flexibility is already there.

The Chairperson (Mr Weir): I accept that. On some of the early arguments, the Department and the Committee have flipped sides. On other issues, we have said that we intend to bring such and such forward, and we will go out to consultation and get the views of schools and people as to what should or should not be there. On this issue, however, there is a concern that, to produce a final list, or at least as good a list as possible, you must have a consultation process. To be fair, I suspect that the Committee has flipped on the other side of that as well. It seems to run contrary to the arguments used earlier on other subjects. To be fair, that is a —

Mrs Gillan: We are putting great emphasis on, arguably, using a lot of resource in the Department and in the Assembly on something for which we have ultimate freedom. The guidance can give flexibility. Schools will be able to determine the motivating factors. There will be all sorts of motivating factors that will change over time. By implying that there should be regulations with a simple list, schools will then be wedded to that list, and we will tell them —

The Chairperson (Mr Weir): Again, the list —

Mrs Gillan: In terms of section 75 and other legislation, the list is minimal. It does not give the impression that we are leaving out other extra factors. We are acknowledging that there are lots of other motivating factors.

The Chairperson (Mr Weir): Regulations may simply say, "The motivation under this may include", followed by a list. At that stage, it does not have to be exclusive.

Mr Rogers: Caroline, there will be much emphasis on the guidance. Could this list not be in the guidance rather than in the Bill?

Mrs Gillan: Equally, when we went out to consultation, a lot of stakeholders wanted to see something in the Bill. A lot of the identities are prime identities where you will find bullying. There will always be others, but, as I said, when we recently tried to capture what was reasonable, we realised that we could not go on listing things forever and a day. We could never hope to cover it fully. That is why, in consultation with lawyers, we felt that it was best to rely on the current section 75 and a number of other legislative duties.

Mr Rogers: I agree with you, but —

Mrs Gillan: Ironically, we were responding to stakeholders in trying to facilitate that.

Mr Rogers: Unfortunately, people will see just the list and not the preceding words "may include".

Mr Lunn: I am looking at the first suggested amendment:

"The Department may by order ... amend subsection (3)."

Why put it in there? The Department can do that anyway. On that basis, what is the Department worried about?

The Chairperson (Mr Weir): No, Trevor, the Department could not do it anyway. Given that this is primary legislation, unless you put something of that nature in the Bill, amending it would require primary legislation as opposed to an order.

Mr Lunn: Fair enough.

The Chairperson (Mr Weir): I prefer the second amendment to the first one, but that is the technical reason for the first amendment.

Mr Hazzard: The list is not exhaustive, but it is important to have it in the Bill. For me, socio-economic background and physical appearance are the most prominent reasons for bullying in schools, yet they do not appear. Is it just a case of sticking closely to section 75?

Mrs Gillan: We stuck closely to section 75 and to other legislation. As we develop the guidance, we accept that socio-economic status, appearance and so on need to be drawn out and recognised.

The Chairperson (Mr Weir): Is it not sending a mixed message that some motivations are in the legislation because they mirror section 75, but the guidance will state that there are other things that we could also include? Would those not be interpreted by schools as being secondary factors that are given a lot less weight than those in the Bill?

Mrs Gillan: I do not think so. The guidance already talks about bullying and lists reasons and motivations for bullying. The guidance that is already out there draws out those issues.

Mrs Overend: I was also thinking that socio-economic factors and physical appearance are prime issues in bullying. If clause 3(3) and the whole list were removed, what effect would it have?

Mrs Gillan: We are responding to the consultation and the agreed policy of the Executive, who agreed to put the list in. The key thing is that schools record the details and motivations.

Mrs Overend: They would still be able to do that.

Mrs Gillan: They would still be able to do that, but, from a policy perspective, the Executive agreed to this policy and the drafting in this way. They could still do that.

Mrs Overend: Would it affect your guidelines if it were not there?

Mrs Gillan: No.

The Chairperson (Mr Weir): There are two possible amendments, and they are mutually exclusive. If you wish, I will put the Question on each amendment to the Committee. If you do not want either amendment, you vote against both. However, if the first amendment is agreed, I will not put the Question on the second one.

The second amendment states:

"Leave out from line 37 to line 4 on page 3 and insert — 'any one or more factors prescribed in regulations to be made by the Department, subject to the draft affirmative procedure.'"

Essentially, it gives the Department the power to make amendments rather than to amend, for want of a better word. Is that clear to everybody?

Mrs Overend: Say that again.

The Chairperson (Mr Weir): The second amendment to clause 3 would more or less compel the Department to make regulations. The first amendment, which refers to negative resolution, leaves the current list in the Bill and gives a power to add to it by way of amendment.

The Committee Clerk: As the Chair says, the second amendment would delete the list:

"(a) age;

(b) disability;

(c) gender reassignment;

(d) marriage;"

blah, blah, blah. It would then leave it to the Department to bring regulations, to be subject to draft affirmative resolution by the Assembly.

The first amendment would leave the list in but would add on:

"The Department may by order subject to negative resolution amend subsection (3)"

so that it could add to or, indeed, take away from the list.

The Chairperson (Mr Weir): I do not know whether this adds to the confusion or brings clarification, but the amendment that starts "Clause 3, page 3, line 4" is listed first on the page, but we are voting on the second amendment first because it comes in the legislation first. As I said, if you are in favour of either of them, it is an either/or; if you are against both amendments, you would vote against both.

Mr Rogers: Chair, could you clarify something? I thought that you said that the second amendment would leave the list in the Bill.

The Chairperson (Mr Weir): No. It is the amendment that we vote on second. The amendment that leaves the list in the Bill is the one that states:

"At end insert '() The Department may by order subject to negative resolution amend subsection (3)."

It leaves the list in the Bill but has the power to add to it. The second amendment — the one that we will vote on first — would more or less make it by drawing up the list in regulations.

Mrs Overend: Which one would be more complicated for the Department to deal with?

Mrs Gillan: It would be the regulation-making one for both the Department and the Committee, because we would prescribe motivations. Our starting point would be the list that we have, but another factor could arise or someone might argue for another motivation being added. We all could get ourselves tied in knots about where we end with the list.

The Chairperson (Mr Weir): That is probably true if you accept either of the amendments, because you are looking at what should and what should not be added.

Mrs Gillan: I reiterate that we will be clear about the meaning in the guidance to schools, pupils and parents. With all the pressures from all the issues that we have to address in the schools sector, do we want to tie ourselves in knots over something that we do not feel is fundamental to addressing bullying?

The Chairperson (Mr Weir): The amendment is:

"Clause 3, page 2, line 37

Leave out from line 37 to line 4 on page 3 and insert — 'any one or more factors prescribed in regulations to be made by the Department, subject to the draft affirmative procedure.'"

Question put.

The Committee divided: Ayes 4; Noes 4; Abstentions 1.

AYES

Mr Craig, Mr McCausland, Mr Newton, Mr Weir.

NOES

Mr Hazzard, Mr Lunn, Ms Maeve McLaughlin, Mr Rogers.

ABSTENTIONS

Mrs Overend.

Question accordingly negatived.

The Chairperson (Mr Weir): The other amendment is:

"Clause 3, page 3, line 4

At end insert '() The Department may by order subject to negative resolution amend subsection (3)."

Question put.

The Committee divided: Ayes 5; Noes 2; Abstentions 2.

AYES

Mr Craig, Mr McCausland, Mr Newton, Mrs Overend, Mr Weir.

NOES

Mr Hazzard, Ms Maeve McLaughlin.

ABSTENTIONS

Mr Lunn, Mr Rogers.

Question accordingly agreed to.

The Chairperson (Mr Weir): There is a departmental amendment that adds to the list persons "with dependants". That group had been omitted. It is probably relatively uncontroversial.

Mr Lunn: Where is it?

The Committee Clerk: It is not on the list.

The Chairperson (Mr Weir): When the Committee dealt with the subject yesterday, it was indicated that the list of 10 motivations reflected section 75. However, there was a realisation that one of the section 75 categories had been left out: persons with dependants. The Department is seeking an amendment that adds those "with dependants" to the original list. Broadly speaking, people were happy enough with that yesterday.

Mr Rogers: Would that cover all carer situations?

Mrs Gillan: Yes, it would.

The Chairperson (Mr Weir): Are members content with the amendment from the Department?

Members indicated assent.

The Chairperson (Mr Weir): There are no other issues that members want to raise under clause 3.

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

Clause 4 (Interpretation)

The Chairperson (Mr Weir): We agreed informally not to pursue any amendments to clause 4. There are no other issues that members want to raise under clause 4.

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

Clause 5 (Short title and commencement)

The Chairperson (Mr Weir): Surprisingly, we did have proposals to amend the clause, which rarely happens. The Committee informally agreed that it would not pursue any amendments. There are no other issues that members want to raise under clause 5.

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

The Chairperson (Mr Weir): No other amendments were suggested informally by the Committee during our discussions yesterday. Other than amendments that members want to table as individuals or as a party, am I right in saying that nobody wants the Committee to table any other amendments?

Members indicated assent.

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

The Chairperson (Mr Weir): That concludes the formal clause-by-clause scrutiny of the Addressing Bullying in Schools Bill. I thank the officials and appreciate that we have probably left you with a little more work to do. The Committee will hold a short meeting on 8 February at 3.45 pm to consider the Bill report. We are looking to tweak — for want of a better word — at least one aspect.

Mrs Gillan: We want to register our thanks and appreciation for facilitating the consideration of the Bill. The Minister very much appreciates the constructive engagement.