



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Planning Bill: Informal Clause-by-clause
Consideration

23 May 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Sydney Anderson
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

Mr Brian Gorman	Department of the Environment
Ms Irene Kennedy	Department of the Environment
Mr Simon Kirk	Department of the Environment

The Chairperson: I welcome the chief, Irene Kennedy, who has been leading us on this, Brian Gorman and Simon Kirk. Has there been any good news from Angus yet?

Ms Irene Kennedy (Department of the Environment): Yes. Baby Phoebe was born last Thursday.

The Chairperson: Very good. You can send our best wishes to Angus. Is he on paternity leave at the moment?

Ms I Kennedy: Yes.

The Chairperson: Good. Many congratulations.

As you all know, the Bill has 28 clauses and each clause will need to be considered in turn. I remind members that the Committee has not indicated at any point so far that it is minded to amend any clause.

Before moving on to formally consider each clause, the Committee should confirm that it is content not to recommend any amendments. If the Committee wishes to amend any particular clause, that could mean having to defer formal consideration until next week when the Committee is due to consider the first draft of its report on the Bill. The time would be needed to allow the Bill Office to consider admissibility and drafting amendments. If the Committee is agreed that it does not wish to amend any clauses, I will proceed with formal clause-by-clause consideration as set out before.

I want to reiterate that I circulated an amendment to clause 2, and the officials had to come back to explain why they thought that it was not appropriate to make that amendment. Have members any further comments on that? I would be very keen to see an amendment to clause 2, but I understand that this is not the view of members. Can I confirm that members are not content to put it forward as our amendment?

Members indicated assent.

The Chairperson: I also want to mention that I talked last time about planning policy statement 1 (PPS 1) whereby sustainable development is economic development balanced by environmental protection and enhancement.

Irene, you said that you would have to rewrite the planning policy statements to have one single, or strategic — you do not call it single now — PPS, which will explain what sustainable development means.

Ms I Kennedy: Yes.

The Chairperson: Consultation will be held before clauses 2 and 6 are implemented.

Ms I Kennedy: That is correct.

The Chairperson: I suggest to the Committee that we consider holding the commencement of those two clauses to affirmative resolution. We will want to see the new strategic planning policy statement to determine whether the Committee is agreeable to it. We want to see the public responses to the consultation on the PPS. Are members agreeable to that?

Mr Hamilton: I am not sure. Cathal has a very puzzled face. He usually has just a puzzled face; he has a very puzzled face now. *[Laughter.]*

The Chairperson: Have I explained myself?

Mr Hamilton: On his behalf —

The Chairperson: I will clarify this. Only a number of clauses will commence on receipt of Royal Assent. Clauses 2 and 6 are not going to commence at that time. They will commence as and when the Department sees fit. Is that right? You are going to put forward guidance, upon consultation on the PPS, before those two clauses will be commenced.

Ms I Kennedy: That is correct.

The Chairperson: That is the procedure as I understand it. Instead of the clauses being commenced automatically by the Department, we can ask for them to be subject to affirmative resolution, which means that they would have to be debated in the Chamber and would need all-party support. I am sorry, it is not all-party support; it is the general position of a majority vote.

Mr Boylan: Just for clarification, the two clauses will not be implemented until PPS 1 is —

Ms I Kennedy: That is correct; the single planning policy statement.

Mr Boylan: It would still be agreed in the Chamber as regards the passing of the clauses. Is that correct?

Ms I Kennedy: The commencement provision is clause 27. Normally, we commence provisions by what is called a commencement order. I understand that the Chair is suggesting that that would be subject to an affirmative procedure through the —

Mr Boylan: It would be agreed in the Chamber.

Ms I Kennedy: Yes.

The Chairperson: It is so that it is not going to be automatic; the Department cannot, just by the commencement order, say that it wants to commence clauses 2, 6 and whatever.

Mr Weir: I would not be happy with that. I would prefer the normal process of the commencement order. To be fair, this is not something that would come in immediately on Royal Assent anyway. The normal process for any of these bits of the Bill is for later commencement dates on that side of things. We should not put some additional hurdle of an affirmative resolution in front of that. At the end of the day, we are going to approve the legislation or we are not. To have to jump over something else to get to that point does not seem to be particularly practical. I would not support that Committee position.

Mr Hamilton: Neither would I.

Mr Elliott: On a point of clarification, has the Department said — it is not in the Bill — that the commencement of clauses 2 and 6 will not start until the other measure, whatever it is, comes into place? Is that an addition?

Ms I Kennedy: We indicated in our response to the Committee last week that we would not commence until we had consulted on the single —

Mr Elliott: Yes, but that is not in the Bill yet?

Ms I Kennedy: No. Clause 27 of the Bill lists those provisions that will come in on Royal Assent. If a clause is not mentioned, it will come in at a later stage, normally by an appointed day commencement order.

Mr Elliott: Are you suggesting that an amendment is required?

Ms I Kennedy: You could put it in, but it is not usual. I have seen it being put in, but it is not usually put in as an affirmative resolution.

Mr Elliott: I am not talking about affirmative resolution; I am talking about saying in the Bill that the clauses would come into effect when that other measure came into place.

Ms I Kennedy: I have not seen a connection between the commencement of a clause and a policy document.

Mr Elliott: How do you deal with that if it is not in the Bill?

Ms I Kennedy: We have given a commitment to the Committee, and the Minister has cleared the position, that we would not be commencing those provisions until we had consulted on the single strategic planning policy statement.

Mr Elliott: It is not in the Bill?

Ms I Kennedy: It is not in the Bill.

The Chairperson: It is workable. It is up to the Department.

Mr Elliott: Is that normal practice? I am asking for clarification, because I am not sure. Has this happened before?

Ms I Kennedy: It has been done, yes. During the previous Bill, we gave commitments.

The Chairperson: Yes. We have done quite a lot of it, Tom. Now and again, the Department will say, "This is a commencement order." We have no power to say that the Department can go ahead —

Mr Elliott: I accept that point. My other point was whether it was normal to do it without having it in the Bill, irrespective of doing that for positive resolution.

Ms I Kennedy: Yes.

The Chairperson: I certainly recall seeing it during the past two years.

Mr Hamilton: What is the motivation for not commencing clauses 2 and 6 until a single planning policy statement is published?

Ms I Kennedy: It is important to elaborate within the single strategic planning policy statement what we mean by promoting sustainable development in planning. It will provide more elaboration and more guidance.

Mr Hamilton: What is the timescale for the publication of that?

Ms I Kennedy: The intention is to consult before the end of the year.

Mr Hamilton: When will commencement happen? Will it happen when the guidance is published?

Ms I Kennedy: We certainly would not want to commence before that. Obviously, when we do consult, there will be some weight attached to the document. As the planning policy statement makes its progress through that process, more weight will be added to it. However, I would have thought that it would be later — into next year.

Mr Hamilton: Therefore, clauses 2 and 6 will not be operative until later next year.

Ms I Kennedy: Certainly not until after the single planning policy statement goes out to consultation.

Mr Hamilton: Where has that appeared from? I appreciate that you have come to the Committee, but is this not a fairly new —

Ms I Kennedy: It is a line that we have been taking throughout the process.

Mr Hamilton: From the beginning?

Ms I Kennedy: It is not necessarily included in the Bill.

Mr Hamilton: It is not included in the Bill. It is not that it is not necessarily included: it is not included.

Ms I Kennedy: It is not included in the Bill.

Mr Hamilton: OK. I am not massively supportive of that approach. I am certainly not supportive of the Minister — my goodness, Chair, I have promoted you —

The Chairperson: It may come.

Mr Weir: You never know. There are some very strange conversations going on with Alasdair McDonnell.

Mr Hamilton: You never know. Alasdair is going to appoint you. It could happen.

Like others, I am not supportive of what the Chair is suggesting, but I am going to give some thought to what the Department is now saying with regard to its intention in taking this forward. It seems that an extraordinary delay is now being put into this. As a legislature, we are in control of the Bill. We can say that this is operative from whatever date we want, and we are now being told that it will be subject to whenever a Minister wants to publish and go through a process of consultation, then further consideration of what comes out of the consultation, and then a finalised version of that.

With respect to the Minister, and other Ministers, that is never a fairly quick process; it is never an easy seamless process. What is being proposed will add inordinate delay to the legislation. The Committee has offered no objection to any of this at this stage, so the Assembly is going to approve this piece of legislation. The Assembly is saying that it wants this piece of legislation and the principles behind it to be in place, but we are now being told that it is going to be subject to the subjective views of a particular Minister.

I am going to consider this, think about it and take it away and look at it, but I think that, by going down the route suggested, the Committee and the Assembly would be giving up control of this piece of legislation, which it supports.

Chair, I am worried about supporting anything that you have put forward now, because of what might happen — you might go for another kiss or something. *[Laughter.]* I am certainly not —

The Chairperson: We need to clarify that.

Mr Hamilton: We do; the rumours are going to start.

I am also uneasy about this proposal from the Department. If the Assembly passed this Bill today, it would no longer be in control of when it comes into force. That is the nub of what is being said. It will be down to a process, and we cannot time-bound that process. As with any piece of legislation, you cannot say that the strategic planning policy statement must be in place by x and that, therefore, clauses 2 and 6 will become operative at that point. We cannot do that. Lots of things could happen. We are now sort of saying, "Well, whenever it is finished."

The Chairperson: Irene, is it your understanding that you would have the strategic PPS in place before Royal Assent?

Ms I Kennedy: Work has certainly begun on that and that is what we intend to do.

The Chairperson: Yes; that is the intention.

Ms I Kennedy: It is important to stress that providing guidance is useful and helpful. There has been a lot of discussion about these two clauses and further elaboration will certainly help understanding.

Mr Hamilton: I do not dispute that, but I do not see why it could not be done before. I can see the desirability of doing it in a single strategic planning policy statement; that is clearly the purpose of having everything in one place. It could be done before that and in this piece of legislation if we wanted to. If the Committee and the Assembly thought that it was necessary to have that very clear definition, we could put that into the Bill if we wanted to.

Ms I Kennedy: The Committee could certainly suggest that those clauses are brought in at an earlier stage or at Royal Assent.

Mr Hamilton: My concern is not that the officials will not do their work in an expeditious fashion. My concern is with consultation processes, which, by their nature, will sometimes throw up things and cause delays. You will then be looking for a Minister to take a decision. With this proposal, I think that the Committee would be giving control of when this Bill comes into practice to a Minister who may change his or her mind.

I appreciate that you might have a different perspective on that. However, if the Assembly is of a mind that it wants this Bill to happen, surely we would want it to happen as quickly as possible and not put up delays that are beyond our control.

The Chairperson: Simon, do you not agree that the two clauses introduce new concepts for planning and for our planners? They need clear guidance, and the strategic PPS is going to provide that guidance.

Mr Hamilton: I do not accept that at all. In fact, I am supporting this on the basis that they are not new concepts. They highlight existing concepts. I do not think that promoting economic development, furthering sustainable development or prompting or improving well-being are new concepts. We have

heard repeated evidence from the officials who are before us today that they are not new concepts and are already part of the planning process. They are not new.

The Chairperson: They are being put on statute now. Before, there was a kind of understanding that those concepts operated, but it is now being put in black and white in legislation.

Mr Hamilton: Some of them are already in legislation.

I am very uneasy about the approach that is being proposed by the Department. I smell a rat, and I am concerned. I might be wrong, and hopefully I am. I have been known to be wrong in the past.

Mr Boylan: Not often.

The Chairperson: No one is infallible; not even Simon.

Lord Morrow: Very rarely.

Mr Hamilton: I cannot remember when though, Maurice.

Mr Boylan: I agree that the principle is grand. My serious concern is that PPS 1 provides the guiding principles for planning, but we are going out to consultation and we could end up in a situation in which those principles are diluted. After consultation, you do not know what is coming, and what we are trying to achieve with this Bill could be diluted. I have serious concerns about that. I am certainly not in favour of affirmative resolution.

This is before us today. I would prefer to go ahead with the Bill the way that it stands and to agree the clauses. There is no point in saying that we are going to leave part of the Bill sitting on the shelf. There is no guarantee that they would run with PPS 1 in tandem with Royal Assent. You are saying to me that we need clarification but the principle of economic weights and everything else in PPS 1 is also clearly stated in the Bill. So you would only be clarifying what is already in the Bill and PPS 1 — well, that is what I assume. We should not wait unless there is a clear guarantee that PPS 1 would run in tandem with the Royal Assent and that the whole document will be implemented at the same time. I cannot see that. Like Simon, I have concerns about how the consultation on the guiding principles of planning in PPS 1 would turn out. We need to seriously look at that now.

My intention was to get through this process today, get the Bill into the Chamber for debate on all these clauses and see where we are going. If any Member wants to table any amendment to try to adjust or amend any part of the Bill, they are entitled to do that. If we could get a guarantee that PPS 1 would run in tandem with the Bill, it would be different. However, there is no guarantee. The Department is going out to consultation, and you cannot predict what is going to happen with that. I have a fair idea, and I could take a stab at it, but I think that there would be issues in relation to the guiding principles. We need to think about that.

The Chairperson: We are not stopping the process; we can go ahead with the process and the passage of the Bill. The Department is going to consult on the strategic planning policy statement, clauses 2 and 6 are going to go through, but commencement will not be until the consultation on that guidance, which is necessary for the planners, has been completed.

Mr Boylan: Chair, I mean no disrespect, but you are predicting the results of a consultation process. You are assuming that the consultation will be in favour of whatever is in the Bill. What would be the point of the consultation process, then?

The Chairperson: The guidance is so important. We need the guidance to underpin the Bill.

Mr Boylan: PPS 1 contains the main guidelines for planning. That is what I am saying. It is the important one.

The Chairperson: Absolutely.

Mr Boylan: You are saying, on the one hand, that the Bill will go through and, on the other, predicting what will happen in the consultation process. You cannot do that. Do you understand where I am coming from?

Ms I Kennedy: It is important that a number of Bill stages are yet to be completed. Those will have to run into the autumn, and the intention is to go out to consultation before the end of the year. They may well run very closely together.

The Chairperson: So the intention is that they will happen in parallel: you will have the guidance in place before Royal Assent.

Mr Hamilton: For clarity on that point, Chair, you are right: we will not complete our Committee Stage until very close to recess, so we could not possibly have Consideration Stage until the early autumn.

You are saying that the intention is to get the sPPS — I cannot remember whether it stands for "strategic" or "single"; the one with the small "s" — by the end of the year. However, there is no definitive date for finalisation. You are right: they could run close, with one finishing and the other starting, but there will still be a gap. Irene, you said that the Department's view is that it could not become operational until after the sPPS was agreed.

Ms I Kennedy: We have indicated that it is important to have it out for public consultation — it may well have weight at that point — so that it provides more guidance.

Mr Hamilton: Clauses 2 and 6, and, potentially, others, could not come into effect until after it was agreed.

Ms I Kennedy: That was the intention. There is always the means in the legislation to have it in place, with the guidance following on.

Mr Hamilton: I appreciate that. You are right: there are options available. I think that it is better not to try to exercise those options and just get it very clear between the Assembly and Department. The concern is that although there may be the best of intentions to get it published by the end of the year, it may not happen by then. It might be the new year. Agreement may not happen until almost a year after it has passed through all its stages in this place. I do not think that that is the sense or intention of the Committee in supporting those clauses. I appreciate that guessing timescales might be difficult, but if experience is anything to go by, it is likely to be a longer period than a shorter one.

Ms I Kennedy: It is important to stress that the single strategic planning policy statement is a very important document that we need to get in place as we move to the new planning system. We also need it to support and elaborate on the provisions of the Bill. That is a high priority for the Department.

Mr Hamilton: It is exactly that point that concerns me. It is the first time that we have ever attempted to do something of that nature. It will be as contested and disputed, perhaps, as elements of the Bill. That, by its nature, will extend the period. I do not think that everybody will be happy with everything in the first draft. There will be some debate and discussion; ergo, there will be some delay. That is my concern, which it seems others share.

The Chairperson: The need for that single strategic planning policy statement has existed for quite a while. The demand or the request for it has been ongoing, and it has been worked on by the Department for some time. Can you give us an assurance that this will go ahead as soon as possible so that it will come out at the same time as Royal Assent and there will not be further delay?

Ms I Kennedy: It is certainly our intention to bring that forward as soon as possible.

Mr Weir: Chair —

The Chairperson: Sorry, Peter. Tom has been very patient. I need to let him in.

Mr Elliott: Thank you, Chair. This sounds a wee bit "chicken and egg" and "cart before the horse". We seem to be doing things the wrong way round, if I am hearing the intention correctly. Obviously,

there has been a gap somewhere if there was no review or consultation on the strategic planning policy statement before the Bill was introduced. However, we are where we are.

The correspondence is extremely vague. It states:

"The Department can confirm that it intends to consult widely on related policy within the single strategic planning policy statement by the end of the year, which will be before the Bill receives Royal Assent and these clauses are commenced."

It does not actually say that you will wait to introduce those clauses until everything is complete; it just says that you are going to try to run both in tandem. You said today that the intention is not to introduce those two clauses.

Ms I Kennedy: We will certainly leave that until after we have consulted on the single planning policy statement.

Mr Elliott: Just consulted on it?

Ms I Kennedy: That would bring a certain weight to the policy statement.

Mr Elliott: "Consulted" does not mean that the policy is in place.

Ms I Kennedy: It adds a certain weight and movement towards the policy being in place.

Mr Elliott: So, as soon as the consultation takes place, clauses 2 and 6 would automatically go into effect?

Ms I Kennedy: Obviously, we would have to review where we are at that time, but the intention is that guidance and elaboration will be available on clauses 2 and 6 at the time that we commence them. That will provide more elaboration on what is meant by those clauses. It is possible to commence clauses without that guidance being available. You could introduce and commence clauses 2 and 6 without that.

Mr Elliott: I have some sympathy with some of the lobby groups about clauses 2 and 6 but, on balance, I am broadly in favour from the economic perspective. I just think we are getting into a bit of a mess. There is no firm outcome, and, as I listen, I am getting even more confused about the process, because we do not know whether clauses 2 and 6 will apply as soon as the consultation is complete or when the draft policy is proposed. Do we wait until the full policy is in place? It is very ambiguous.

I believe that there is a better opportunity for a better system, which is that you could build in a reporting mechanism to the Assembly for those two clauses, and you could say that the Department has to report to the Assembly on their workings. That has applied in other Bills. That could be done over a two-year or a three-year period. I do not mind what period it is, but it would at least give the Assembly an opportunity to review the workings of those clauses and see how they operate. To my mind, this introduction method has the potential to go wrong. We heard Simon Hamilton say that he is not at all happy. I do not think that this is the proper way to go about it. A reporting mechanism would be much better.

The Chairperson: As I understand it, Irene, that is already in place: we can review it in about three years.

Ms I Kennedy: Yes. That is from the commencement of the 2011 Act. It requires the Department to review the operation of Part 3 of the Act within three years, and further reviews are required subsequently.

The Chairperson: That is already in place.

Mr Elliott: Is that a reporting mechanism to the Assembly?

Ms I Kennedy: If you bear with me, I will check. I think that the Department has to prepare a review. Section 228 of the 2011 Act states:

"(1) The Department must—

(a) not later than 3 years after the commencement of Part 3 of this Act"

— that is the planning control part —

"(b) at least once in every period of 5 years thereafter,

review and publish a report on the implementation of this Act."

The Chairperson: Irene, that will not start until 2015 under this Bill.

Mr Elliott: Can we not then build a reporting mechanism into this Bill for those two clauses?

Ms I Kennedy: You could. That is certainly a possibility.

The Chairperson: That would require an amendment from the Committee.

Ms I Kennedy: You would have to decide what the time period would be. It is a possibility, similar to the provision in the 2011 Act.

Mr Elliott: I think that that is a better way of doing it.

Mr Weir: That is quite an interesting idea, Tom, and there is a lot of merit in it. Presumably, on that same basis, you would have the commencement of those provisions at the same time as Royal Assent?

Mr Elliott: Yes.

Mr Weir: That would mean that you would have a definitive time. If you had a definitive time for when those would take effect, and, if it were at Royal Assent, it would, to some extent, throw the onus back on the Department to say that there are certain things that need to be done. You would hope that they would be done by such and such a time, and it puts the onus on the Department to get things ready at its end. That means that you would have certainty on the commencement of clauses 2 and 6, with the reporting mechanism.

Mr Hamilton: We would have to amend clause 27, which is on commencement. We would have to add clauses 2 and 6 to the list.

Ms I Kennedy: That is correct.

The Chairperson: We are talking about amending the commencement dates of the clauses. We need to give Tom's suggestion to the Bill Office to look at. We need to ask the Clerk of Bills to look at that and bring it back to us next week.

Mr Weir: That would be sensible. If there is a reporting mechanism, the logic of that is that clauses 2 and 6 are linked with the list of the clauses that are coming in at the time of Royal Assent, which requires an amendment to clause 27.

The Committee Clerk: May I seek clarification on the process, Chairperson?

The Chairperson: Yes.

The Committee Clerk: The Committee had intended to do its formal clause-by-clause consideration today, on the assumption that it did not have any amendments. However, given the issues that have arisen, may I clarify whether the Committee is content to postpone its formal clause-by-clause scrutiny for a week to allow time to look at these issues? The Bill Office can look at them as well, but, usually when the Committee comes up with suggestions for amendments, we would ask the Department to

look at them as well. Perhaps we could ask the Department to come back next week with its views on the issues that the Committee has identified today.

Mr Elliott: We cannot go ahead with the formal clause-by-clause scrutiny.

Mr Hamilton: We have to stop. If we cannot agree a clause, we have to stop.

The Committee Clerk: It would be much cleaner to defer it for a week. Any possible amendment could require consequential amendments that the Committee may not be able to anticipate today. The Committee could formally agree a clause, only to realise next week that, in fact, it requires a consequential amendment.

The Chairperson: We will leave it until next week. Are members content with that approach?

Members indicated assent.

Mr Weir: If we are getting advice from the Bill Office about Tom's suggested amendment and an amendment to clause 27, are we to assume that there are no other issues that we need to raise with the Bill Office? There is no point in coming back next week, only for someone to come up with another suggestion. I am not aware of any additional matters, but we may as well clarify that now.

The Committee Clerk: That is absolutely right, Chairperson. We have to have the formal clause-by-clause scrutiny next week, and the decisions that will be made at that meeting will be final. If there are any other issues, now is the time to identify them.

The Chairperson: OK. I want it on record that I was not content with clause 2. I circulated an amendment that was not agreed by the Committee. I intend to table an amendment in future. I may get lucky. *[Laughter.]*

Mr Hamilton: Do not use phrases like "get lucky". *[Laughter.]*

Mr Weir: I fear that your dalliance with Simon the last time round was very much a one-night stand. *[Laughter.]*

The Chairperson: No more of that. Irene, Brian and Simon, thank you very much. We will see you next week.