



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

The Local Government (Statutory Transition  
Committees) Regulations (Northern Ireland)  
2013: DOE Briefing

20 June 2013

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Ms Anna Lo (Chairperson)  
Mr Sydney Anderson  
Mr Cathal Boylan  
Mr Tom Elliott  
Mr Barry McElduff  
Mr Ian Milne  
Lord Morrow  
Mr Peter Weir

**Witnesses:**

Ms Tracy Johnston	Department of the Environment
Ms Liz Loughran	Department of the Environment
Mr Ian Maye	Department of the Environment

**The Chairperson:** The next item on the agenda is the departmental briefing on regulations for the establishment of statutory transition committees. The draft statutory rule is at page 61. Members have been provided with a copy of the SL1 at page 77 and a ministerial letter on the appointment of chief executives in the new councils at page 80. The Committee considered the SL1 at its meeting last week. It was content for the Department to make the rule. The rule is subject to draft affirmative resolution procedure. The Department hopes to bring a debate to the Assembly before the summer recess. Members now have a tabled paper — the very last page of the tabled papers — at page 37. This is quite important, members.

**Mr Weir:** I think that I should mention, first of all, that the Business Committee has set down the date of 1 July, potentially, for the debate on the statutory rule. I also want to declare an interest as a member of North Down Borough Council and the North Down and Ards voluntary transition committee.

**Mr Boylan:** Shame on you. Boo.

**Lord Morrow:** I declare an interest as a member of Dungannon and South Tyrone Borough Council.

**Mr Anderson:** I declare an interest as member of Craigavon Borough Council.

**Mr Boylan:** Shame.

**Lord Morrow:** There is no monetary benefit.

**The Chairperson:** Members, I will let you have a quick read of that letter at page 37. It is quite important. We will probably have questions to ask. It is from the Local Government Staff Commission for Northern Ireland. It raises concerns about the SL1.

In the meantime, I welcome Ian Maye, deputy secretary; Liz Loughran, the acting director of the local government division; and Tracy Johnston from the local government division.

You are dying to say something, Cathal.

**Mr Boylan:** I am ready for questions. I will just wait. I just wanted to put my name forward.

**The Chairperson:** A very brief couple of minutes for your presentation, Ian, please.

**Mr Ian Maye (Department of the Environment):** I will say very little by way of introduction, Chair. It is a great pleasure to be here today and to be at this point in the process. It is one of our key milestones to move from the current voluntary transition committees to statutory transition committees, and in due course, next May, we will move to the election of shadow councils or councils operating in shadow form prior to the creation of the new councils on 1 April 2015.

This is an important step in the process. It puts in place a number of control mechanisms to give the transition committees greater status and control for the direction of travel of the changed programme. It only imposes controls where they are needed. We have had a number of conversations with key stakeholders, beginning back in February this year, when we ran a series of seminars across Northern Ireland. We brought together a significant number of representatives at elected member level and at officer level from councils, the National Association of Councillors, the Northern Ireland Local Government Association (NILGA) and other organisations.

What is before the Committee today is the product of that intense discussion and engagement with the local government sector. It also reflects the discussions that we have had within the implementation structures at regional level during the regional transition committee chaired by the Minister and also the regional transition operational board, which comprises the chief executives of councils from the 11 clusters and a number of officials from government. It is a reflection of those conversations. We have sought to put in place the controls that we feel are necessary and that the sector feels are necessary, and we are very happy to bring the regulations before you.

Liz, did you want to say anything about the construction of the regulations?

**Ms Liz Loughran (Department of the Environment):** I will not go through them in detail, Chair, but the regulations are made under the powers that are contained in the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010. Those regulations were drafted at a time where there was no shadow period envisaged, so we are slightly constrained by the powers within that enabling legislation. Some things that appear in the 2010 Act are not contained in the regulations because they are no longer appropriate; for example, the setting of the rate.

Would you like me to go through the regulations in detail, Chair, or move to questions?

**The Chairperson:** Members, we do not need that, do we? Shall we go straight to questions? Are members content with that?

*Members indicated assent.*

**The Chairperson:** As I said, we have just received a letter from the Local Government Staff Commission for Northern Ireland. It has some concerns in relation to the appointment of staff to a new council, particularly the appointment of the office of clerk; that is chief executive officer (CEO). Clause 18 (1)(b) states:

*“The selection and appointment of a person to the office of clerk for a new council —  
(b) must be approved by a two-thirds majority of the membership of the statutory transition committee.”*

Its basis for writing is that such a practice is in conflict with the Local Government Staff Commission's statutory code of procedures on recruitment and selection. It also says that its position is reinforced by advice from the Equality Commission and is the result of industrial tribunal decisions.

**Mr Maye:** If the Assembly agrees the regulations, we will want to sit down with the commission immediately and work with it to work up the details of the process that will be employed to bring forward candidates to each of the 11 transition committees. We want, to the maximum extent possible, to work within the existing commission code of practice. However, we may need to build in elements that are unique to this unique process. The intention is to run a single simultaneous competition across each of the 11 clusters and to give everyone the opportunity to compete on a level playing field. Candidates will then be presented, using the commission code of practice procedures, with the panel being drawn from the transition committee, with independent observers, and so on; that will be entirely consistent with the commission code of practice.

We need to think very carefully about what happens once the panel draws up its merit order list of the candidates who are above the line and can be presented. The Civil Service Commissioners approach to the appointment of permanent secretaries is an example of where the panel draws up the merit order list and the top person on that list is presented to the Minister. If the Minister accepts that person, the appointment is made. If the Minister rejects that person, the competition starts again. We need to think very carefully with the staff commission about how we deal with the end stage of the process and how candidates, or a single candidate, at the top of the merit order list are presented to the transition committee as a whole for ratification, and if that ratification is forthcoming with a two thirds majority, the appointment can be made.

We want to build on the existing commission code of practice and on good practice generally to ensure that we do not do anything that causes concern, either for the Local Government Staff Commission or the Equality Commission. We still have a lot of detail to work through with the Local Government Staff Commission, but we think that its concerns are capable of being addressed in a sensible and rationale way.

**The Chairperson:** I remember the Minister's letter. It will be an open competition. Are you going to recruit a group of, say, 11 potential CEOs?

**Mr Maye:** There will be a single competition. However, we envisage that candidates who present will indicate which of the new council clusters they wish to be considered as candidates for. We will then go through a process that is likely to involve a number of selection criteria and processes, including an assessment centre. It will then be for individual panels drawn from transition committee membership at cluster level to consider the candidates who have presented and made their way through the assessment centres so that they can do a final interview and then draw up a merit order list.

We need to consider with the commission what happens at the next stage of the process. Is a single candidate or person who tops the merit order list presented to the committee with basic factual information about the candidate and the committee invited to agree the recommendation of the panel and have a formal vote in which, if there is a two thirds majority, the appointment is made? We need to consider — and we have no firm view on this — whether, if the candidate presented is rejected by the committee, the second candidate in the merit order list is presented or whether the competition is re-run.

**Mr Weir:** I will make a procedural suggestion. There is a lot of meat in the stuff on the statutory transition committees. I wonder whether it would be worthwhile to take questions on the specific issue of the appointment process and deal with it separately before going on to the rest of the stuff. I am conscious of the fact that there may be a number of questions on this bit and that it is a discrete issue compared with the other elements.

**Mr Maye:** The key issue is that, in the appointment process, the final choice needs to be made by the body of elected members in each of the 11 clusters and not by another party. We need to design the system to facilitate a proper and fair selection process. We will use the staff commission and take advice from it, but we will leave the ultimate choice to the body that is politically charged with responsibility for making that appointment. We feel that we can work with the staff commission and work within and build on its code of procedure in a sensible and, in legal terms, a defensible way to ensure that the process is fair.

**The Chairperson:** OK; it sounds so complicated. I want to just clarify it in my head. You are going to establish a recruitment panel and bring in people from the independent sector, HR and some members of the transition committee.

**Mr Maye:** Yes, under the terms of the existing commission code of procedure.

**The Chairperson:** OK. Will that involve a spread of different parties?

**Mr Maye:** That would be the normal practice at a local level when councils make senior appointments. We want to adopt the same procedures and draw on the membership of the transition committees.

**The Chairperson:** OK. What would happen if, for example, you had someone who wants to be the next clerk of Belfast City Council? Will you assess that person, create a merit list and give the name of the person who is top of that list to the transition committee to decide?

**Mr Maye:** If two thirds of the Belfast transition committee agree to that recommendation —

**The Chairperson:** That person will be appointed. If not, will it go down to the next one on the list?

**Mr Maye:** That choice is still to be made. We want to have discussions with the Local Government Staff Commission about whether it would be appropriate to move to the second candidate in the order.

**The Chairperson:** Peter. Sorry, no Cathal first.

**Mr Boylan:** Go on ahead.

**The Chairperson:** No Peter, you have already asked a question. Let Cathal ask.

**Mr Weir:** I will leave it to Cathal.

**Mr Boylan:** Go ahead.

**Mr Weir:** I want to make a couple of points. The rule will give the power to appoint or, more or less, make a requirement to appoint chief executives. It will give a wider range of powers, so that you may or may not look at other staff.

I have to say that I am not entirely happy with your explanation — the more that you explain it, the less happy I am. Given what you have said, and assuming that this passes in the next week or two, I presume that some sort of directive will be given to statutory committees and transition committees that no action should be taken on any selection until either further regulations or instructions are issued. Things could get very messy if somebody jumps in.

I want to press on two issues. The process that you outlined does not sound particularly satisfactory. Unless I picked it up wrong, it seems that, largely speaking, you will go through a process that will involve some degree of selection of people locally, but it seems that, ultimately, the process will produce a top person on merit. Take my area and the North Down and Ards transition committee as an example. That person will appear before that committee, and the only role that the committee will have is to give that person a two-thirds majority or not and then it might go down to the next candidate. I do not regard that as satisfactory and I will tell you why. Some people will have certain arguments about who should be doing the selecting, but surely there should be a number of applicants for a job, whether you have a two-thirds majority or use a selection panel, the full transition committee or whatever. Whether it is the North Down and Ards voluntary transition committee, the Fermanagh and Omagh voluntary transition committee or whatever, there should be a pool of, for the sake of argument, two, three or four people — maybe only one person will apply. If there is more than one candidate, a panel should be drawn from that transition committee. It should then interview the candidates and select the best person. That does not appear to be the case.

I do not think that that will be taken particularly well. There may be a power of veto, and I have to warn you that people will be very nervous about issuing that veto in case they end up in an industrial tribunal. If I was sitting on a transition committee, I would not feel particularly comfortable if I was told,

“There has been an assessment exercise and Mr Bloggs was the top candidate who emerged in your area. You should do the interview with him and accept or reject him.”

**Mr Maye:** No, that is not what we have in mind. What we have in mind is exactly what you said, that there would be a local panel drawn from the membership of that transition committee, which would interview candidates, make up its own mind on who were above the line and suitable for appointment. It would then place them in merit order based on their performance.

**Mr Weir:** Let us take a hypothetical example. Three people have expressed an interest in being chief executive or clerk of the new North Down and Ards Council. So, you are saying that all three would appear in front of and be ranked by that selection panel. If the anonymous Mr Bloggs was the top name, that would come back to the transition committee for a two-thirds approval.

**Mr Maye:** Yes.

**Mr Weir:** With respect, that is not what seemed to be picked up from what you said earlier.

I appreciate that there is a desire to provide some level of protection and a greater buy-in. I am very much in favour of open competition — do not get me wrong on that. However, the staff commission seems to have a concern that the idea of a two-thirds approval by a transition committee would fly in the face of what it regards as normal practice.

Where did the idea of two-thirds approval come from? Did the Department get clear-cut legal advice on that or are we concerned, depending on how it progresses, that a statutory rule will have to be brought in in the autumn to cover that situation? What is the position as regards that?

**Mr Maye:** It was subject to legal advice. We sought legal advice on the entirety of the rule and discussed the detail with the Departmental Solicitor's Office. As we work our way through the process, we will ensure that we have legal advisers with us at every step in designing the detail of the process with the Local Government Staff Commission. We will also bring that process back to the regional transition committee for agreement. We are also happy to come back to the Committee.

**Mr Weir:** Where did the idea of two-thirds approval come from? I can see a danger of people having a certain hands-off quality. For the sake of argument, the interview panel produces Mr Bloggs as the top candidate. That then goes before the transition committee, which feels that if it does not produce a two-thirds majority and rejects Mr Bloggs, who came top on merit as a result of an independent selection process, and goes out to competition and appoints Mr Smith instead, it will quickly find itself in front of a tribunal on the basis that it did not appoint on merit.

To some extent, therefore, I am unsure of the two-thirds side of it, where that idea came from, whether it would leave transition committees vulnerable, and is effectively saying, “Hands off. We will not be the ones putting a spoke in the wheel of this because we will land ourselves in it.”

**Mr McElduff:** Chair, all Mr Weir's references relate to successful male applicants. It could be Miss Bloggs or Miss Smith who emerges as a chief executive.

**Mr Weir:** I completely understand that, Barry. That is why, in the second example, I also picked a male because I did not want to give the impression that a male would automatically get the position and a female would be second. That did cross my mind.

**Mr McElduff:** Thank you.

**The Chairperson:** What will happen if the person sent to the transition committee is rejected?

**Mr Maye:** That is still to be determined. There are a number of options in that case. One option if an appointment is not made would be for the competition to begin again for that cluster. Another alternative that we want to explore with the staff commission and our legal advisers is whether, in those circumstances, the transition committee would move to the second candidate on the merit order list.

There are options and we have no fixed views at this point on which of the options is preferable. However, we want to explore them with the staff commission and others.

To take Mr Weir's point, there are dangers in this process. There are always dangers in any selection process, but our job as officials is to construct the process using the best possible advice to minimise those risks.

The basis for the two thirds majority was that this is a unique situation. The transition committees, even in statutory form, are acting as proxies for the new councils. They are making the choice in advance of the new councils being elected and coming into being. The Department felt that there was a need, in the absence of the new arrangements for governance to be brought forward in the Local Government Bill and, in the absence of those protections, to build in some additional protection by way of a higher level of majority required.

The norm in these circumstances, in the Local Government Act 1972, is a simple majority, but the Department felt that, in these circumstances, given the unique nature of this process and the fact that the transition committee will act as a proxy for a new council in making the appointments, it would be sensible to build in a slightly higher hurdle than normal to ensure that the final choice carried legitimacy across a majority of a council as a whole and the transition committee.

**The Chairperson:** There is still a danger then, that you are giving an advantage to larger parties with more members in the council. That almost vetoes that.

**Mr Maye:** We do not think so. We will probably come on to that issue at a later point in the guidance. However, we would expect the membership of the transition committees to reflect the political balance in the councils that are making the appointments of their representatives to the transition committees. We envisage that a transition committee will be broadly reflective of the political make-up of the constituent councils in that cluster.

**The Chairperson:** OK. Cathal?

**Mr Boylan:** Thank you very much, Chairperson. I was going to say, "Please, miss", but the opportunity has gone. Peter Weir stole my thunder, so he is not getting in front of me again.

**The Chairperson:** You let him.

**Mr Boylan:** No, no; well, I was not going to argue over the table.

It is a very important time for local government. We can joke and have a laugh about it, but the transfer is a serious issue. I want to address that point. I have four quick points to make, Ian.

Who sets the criteria for the assessment of the chief executives?

**Mr Maye:** We aim to sit down with the Local Government Staff Commission to work up the detail of the process and to bring those proposals back to the local government reform joint forum, which brings together the management side representatives from local government, some central government representatives — representing the views of Ministers — and the main trade unions in local government. The management side, through the JNCC and the Northern Ireland Joint Council for Local Government Services, are represented directly on that forum.

We can, in addition to those discussions, bring the entire package back to the regional transition committee for discussion before putting the finishing touches to the package and launching the process. We want to ensure that as many people as possible across the sector are involved in this key decision and process, so we can bring those issues back to the regional transition committee to allow the representatives of each of the clusters and the NILGA office bearers to take a view on whether the process is adequate and delivers what is needed.

**Mr Boylan:** OK. I will put the next three points together — the make-up of the body, the interview panel and the selection panel and the fact that they will make a recommendation that will go back to the transition committee for agreement. Can you clarify those three points for me?

**Mr Maye:** OK. We envisage that the membership of the panel will be brought together in accordance with the recommendations of the Local Government Staff Commission code of procedure. Normally, that would involve a number of political representatives from the council or the cluster that is making

the appointment, together with a small number of observers. Essentially, it is a politically-driven panel, which would be provided with support by the Local Government Staff Commission and a number of council staff.

**Mr Boylan:** Have you any numbers in your head yet?

**Mr Maye:** To be perfectly honest, we do not. That is the next stage in the process. We want to sit down with the Local Government Staff Commission and begin to work through the detail. That is the sort of panel that we have in mind; it is entirely consistent with the Local Government Staff Commission code of procedure.

**Mr Boylan:** After the interview process, they would make a recommendation and go back to the transition committee?

**Mr Maye:** Yes.

**Mr Boylan:** I have two issues. First, the person who is interviewed, goes through the proper independent process and makes the top of the merit order should be qualified to take the job or allocated the position. I would have some concerns if that was challenged again, because the actual members interviewing are doing so on behalf of the transition committee itself. It is just like a smaller executive board of the transition committee. We need to clarify that point. If I was in for the job and got it on merit, and then it was overturned by the committee, you would actually be assigning people to the selection panel to interview. The message needs to get clearly out there that there are concerns about that. We need it in writing how that whole process will take place.

**Mr Maye:** We are very happy to come back and brief the Committee on the detail once we have worked through the process of developing the detail.

**Mr Elliott:** Thank you for that. Would it not have been prudent to speak to the staff commission before drafting the regulation as opposed to after? I accept that you are going to have to have ongoing discussions, but surely it would have been prudent to have a discussion with it beforehand to make sure that everything was satisfying its requirements. It has made a pretty clear reference, and I do not see how you are going to tie up those two issues, Ian, because you are in direct opposition with what it is saying. That is the reality of it.

**Mr Maye:** The staff commission advises the Department on those matters, and we do take its advice fairly seriously, but I repeat that this is a unique set of circumstances. The current commission arrangements are not designed with those circumstances in mind, so it is a different process. It is a unique process for the circumstances that we face of appointing the senior post holders to the new organisations at a point when the statutory transition committees themselves are acting as a proxy for the political membership of the new councils and in advance of those new councils being elected. So it is a unique set of circumstances and we are trying to work with the staff commission. We do work with the staff commission and sit down with it on a regular basis. It was part of the engagement process on the regulations. It has identified an issue and we want to work with it to ensure that that issue is addressed in a satisfactory way for all parties, most particularly for the bodies that will have to make the appointments, to ensure that they are put in a position to be able to make those appointments without significant risk of challenge.

**Mr Elliott:** The reality is that, whether you take its advice seriously or not, you have not taken it on this occasion, whether you have asked for it or not. The point is that it is turning the staff commission guidance for appointing staff on its head. That is the reality. So you are in direct opposition and competition with it on that.

**Mr Maye:** We do not think that we are in direct opposition.

**Mr Elliott:** That is the point the commission is making in its letter.

**Mr Maye:** I do not think we are in that position, and we certainly plan to sit down with it and work through the detail very quickly. Its advice and assistance is important in this process, but I repeat the point: this is a unique set of circumstances. The commission's code of procedure was not drawn up with these circumstances in mind. It was drawn up to facilitate the appointment of senior posts in the existing council structures, not with the reform process and this unique set of circumstances in mind.

We think the issues that it has raised are capable of resolution. We are confident of that. The next step of the process is to sit down with it and work through the detail, to bring that detail back to the joint forum for discussion with the trade unions and to bring it to the regional transition committee to ensure that the broader local government sector is content with the detailed arrangements that we propose to put in place.

As I said, I am very happy to come back at that point to brief the Committee again.

**Mr Elliott:** Ian is not getting my point: the legislation that he is anticipating will be through by then. The regulation will be through. He is talking on the basis of what comes through in the regulation, not on the staff commission's position or procedures.

**Mr Maye:** The statutory code of procedure is a statutory code made under legislation. That legislation is the Department's legislation. We are satisfied that there is no conflict between the two and that we can reconcile the two issues in this unique set of circumstances. We are confident that we can do that, respecting the staff commission's view and putting in place a mechanism that will ensure that, to the maximum degree possible, the code of procedure is used.

**The Chairperson:** Would it be possible at the second stage for you to give the transitional committee three candidates rather than the one with the top marks? Would it be possible to let them to choose a candidate rather than giving them the one person and saying, "Take it or leave it"?

**Mr Maye:** The normal principle is to operate on the basis of merit order rather than using an above-the-line list. That is the principle that has been applied across most parts of the public sector in recruitment competitions. What you are describing is commonly used in the public appointments system, but an above-the-line list is not normally used in recruitment competitions.

**Mr Anderson:** Thank you for your presentation. I am trying to get my head around the assessment and interview panel. You tell us that there will be political representatives from the different councils on that panel. The appointment is by open competition, so an existing chief executive could go along to an interview by the assessment panel. Do you see an issue with a panel interviewing, for the want of a better term, its own person? There could be a bit of a conflict there. If I was on the panel, the conflict would arise with the Craigavon Borough Council chief executive. You have different political parties interviewing their own chiefs. That could be a good thing, but it could also be a bad thing. Do you see a problem there with a conflict of interest? Have you thought about that?

**Mr Maye:** We do not think so. It is an issue that we have thought about. There is not a problem in that there will not be a single candidate representing all the councils in a particular cluster, with the exception of Belfast. Even in Belfast, the appointment process will be the responsibility of the Belfast transition committee, which will expand under these regulations to include representatives from the areas that are due to transfer from Lisburn and Castlereagh councils. So, it will be a broader group.

I have no doubt that the panels will seek to select the best person for the job. It is a new job, and, as was clearly set out in the Minister's letter, it is a much bigger area with a much greater range of responsibilities. It will be a bigger organisation. In cases where there are a number of candidates coming forward from a cluster, the key thing will be to ensure that the panel that the transition committee selects to carry out the process is broadly reflective of, and represents, each of the councils in that cluster rather than just one. If it was just one, you would be introducing a risk of a favoured candidate being put forward and selected through the process.

Due to the composition of the transition committees — they draw from each of the existing councils and the responsibility is broadly spread — and the fact that councillors on those committees will want to make the best appointment for the council for the future, there is not a significant risk. There is an entire body of law and protection built around recruitment processes, and if there is evidence that people have been selected for the wrong reasons, challenges can be made and the law can be invoked.

**Mr Anderson:** I take the point: everything should be done by the book. It is an uncomfortable position. I sit on a board of governors. On one occasion, a relative of mine appeared as one of the candidates, and that made it very uncomfortable for me.

**Mr Weir:** Were you biased?

**Mr Anderson:** She did not get the job, by the way. *[Laughter.]* I was uncomfortable with it, and I had to speak up and say so. However, at the end of the day, they were happy enough to let me sit on the panel. I take the point that councillors who have worked with a chief executive for, maybe, many years still have ensure that that chief executive ticks the boxes for the specific criteria. It is something that you have thought about and taken on board, and you are quite confident that the process will work even in those circumstances.

**Mr Maye:** That is why, at this point, we envisage the process involving a single assessment centre, so that all the candidates are put through their paces in a proper and rigorous way at the assessment centre before moving to the point where they are interviewed. We want to make the process as rigorous as possible, working as closely as possible to the existing commission code of procedure, which has been put together to address exactly those sorts of issues. You are absolutely right: there are issues that we need to pay very close attention to. That is why we want to use best practice, as far as possible, in making these appointments.

**Mr Boylan:** Obviously, it will go back to the committee for ratification. I take Sydney's point about possible conflicts of interest, but there is a proper assessment process. It might not be as simple as asking a certain question; I do not know, but I will see how it is dealt with.

Chair, I have another point. Have we finished on the appointment of the chief executives, because I want to bring up one other issue?

**The Chairperson:** I have been talking to some councillors who are not very happy about the fact that they will not have a say in appointing their own chief executive and, as you say, will be given one name and told, "Take it or leave it".

**Mr Weir:** To be fair, that is not what he said. That was the initial impression, but that is not the case.

**The Chairperson:** So how do you address that? You are going to give them the name that is at the top of the merit list?

**Mr Maye:** It will be councillors who make the choice because councillors from the transition committees will comprise the majority of members on the assessment panel, which will carry out the interviews at that stage of the process and put forward the recommendations to the transition committee as a whole. That is exactly why a role for the transition committees as a whole was built into the regulations, because we feel that it is essential that there be wide political ownership, at a local level, of those appointments.

**The Chairperson:** So what you are saying is that each panel will be different.

**Mr Maye:** And local.

**The Chairperson:** They will be local and different. So, there will not be one big panel that interviews all the CEOs for all the councils.

**Mr Maye:** Each transition committee will have its own specifically appointed panel.

**Mr Weir:** The North Down and Ards selection panel will be drawn from the transition committee and some others, and it will interview the North Down and Ards candidates.

**The Chairperson:** All right. OK.

**Mr Maye:** Certainly, our very clear purpose is to ensure the maximum degree of political ownership.

**The Chairperson:** So the individual panels will reflect the membership of local councils.

**Mr Maye:** Yes.

**The Chairperson:** OK.

**Mr Boylan:** Regulation 2 deals with the establishment and membership of the committees. Obviously, guidance was issued on that the last time round. Will there be the same process? If there are 16 members on each transition committee, how will they be appointed? Is that down to parties? What is the position on that?

**Mr Maye:** Previously, the guidance required the individual councils to choose the representatives for the voluntary transition committees on a basis that was proportional to the political make-up of that council. In most cases, the councils used a variation of d'Hondt to do that. Some councils chose to use other methodologies, including single transferable vote in a couple of cases. So, the choice was made at local level, but recognised methodologies were used.

Mr Weir will recall that there were problems at that time, in that there were differences in application at local level. What we are proposing to do this time in the guidance is to refer to the three methodologies that are or will be defined in the local government Bill and to encourage councils to use one of those methodologies. If councils fail to reach agreement on which of the methodologies should be used, the default should be d'Hondt. That is entirely consistent with the new arrangements that we aspire to move to under the local government Bill. That will still give the councils some flexibility, but it will encourage them to work within the spirit of the new governance framework.

**Mr Boylan:** Will the guidance be reissued?

**Mr Maye:** Yes, we are refreshing them at the moment. The intention would be to issue guidance as early as possible in July.

**Mr Weir:** Just a very small point on the guidance issue. I think that is a sensible way forward. One of the issues that did arise was around different applications of d'Hondt. Will the guidance for use, which I suspect is going to be in the reorganisation Bill, make it clear that it is on the basis of the number of seats at the time of the election? There is obviously a separate issue that could be disputed. In a few councils, there has maybe been a change in personnel since an election; we have all seen gains or losses in that regard. However, I presume the guidance will make clear that the calculations are to be made on the basis of the number of seats at the time of the election.

**Mr Maye:** That is an issue on which we would welcome the advice of the Committee. Our current thinking is that we would identify in the guidance the headline methodologies; in other words, what is likely to be on the face of the Local Government (Reorganisation) Bill. Another option, in addition to identifying the three methodologies and defining d'Hondt as the default methodology in the absence of agreement at local level, would be to replicate the detailed methodology, which will be in the schedules to the local government Bill. That is an option. The possible downside of that is that some councils have gone ahead and made their choice of representatives to the statutory transition committees using the methodology that they have used previously. Mr Weir is right to say that there were variations in the way in which d'Hondt was applied at local level. One issue we are conscious of is that if we define the precise methodology by reference to what is going to be in the Bill — and we can do that — we would be forcing some of the councils that have already made their choices to rerun that process and re-ratify their choices.

**Mr Weir:** The other related issue goes back to Cathal's point, but in a different way. To be fair, I suspect that membership of the voluntary transition committees will largely reflect that of the statutory committees. There has maybe been the odd dispute about whether such-and-such a party is represented in one seat here or there, but, broadly speaking, across the board, it seems to have been done in a reasonably proportionate manner across the 26 councils. From the Department's point of view, is there any stopgap or interventionist power in the guidance? I would hope that it would not happen, but, say, for example, one council wanted to throw this out completely and appoint an entire slate from one party, is there any role or power for the Department to then step in and say, "Hold on a moment, the names that have come forward from such-and-such a council are really not fulfilling the guidance"? What is the safeguard? I would hope that it would not be needed; I am just saying.

**Mr Maye:** The guidance will be statutory guidance. In the past, our experience has been that councils and clusters have worked within the spirit of the guidance. There would be no power of direction on the part of the Minister to force a transition committee to do something if it had been wilful and taken another path, as you have described. Ultimately, the Department could judicially review that council.

**Mr Weir:** Ultimately, it would not really be the transition committee. It would be the sponsoring council, if it said that it was going to put forward eight names from one party for eight places.

**Mr Maye:** The Department and the Minister would not have a direct power of intervention, but there are other mechanisms. Pressure could be brought to bear.

**Mr Boylan:** It is a valid point and the same point that I was making. The only thing following on from that, Ian, if two is related to 18 in terms of assigning that chief executive, possibly. There needs to be something there, too. If it were to favour one party, you would then have to question the appointment of a chief executive. Questions would be asked about that.

**Mr Maye:** In the previous iterations of this process, we found that, as councils got to grips with their internal selection processes, questions were raised, and they came back to what was then the strategic leadership board for discussion, and advice was given by the Department. In most cases, we were able to resolve any difficulties at local level without having to resort to stronger means. We may have to work our way through a similar sort of process again.

As I said, ultimately, there are no direct intervention powers as a result of a failure to adhere to the guidance, but if there is a flagrant decision by one of the individual councils to do its own thing, the Department could judicially review that decision.

**The Chairperson:** That can be very costly.

**Mr Maye:** This is an important process. It is important to get it right.

**Mr Elliott:** I have two quick points. First, the Department, through the legislation, will have powers to enforce, because the legislation says that it "shall" appoint the clerk. So, obviously, there is an enforcement power there. The statutory transition committee must do that, and there is no get-out clause. So, there is no flexibility for them whatsoever in this legislation. The second point is around the appointment of a clerk, as opposed to a chief executive. Why is that term used?

**Mr Maye:** It is the term that is currently defined in law. It has gone out of fashion in everyday use, but it is still the term that is used in the 1972 Act.

**Mr Elliott:** OK. Do the staff commission procedures say the same?

**Ms Tracy Johnston (Department of the Environment):** They say "clerk" and "chief executive", but the term "clerk" is used. In the legislation, we had no choice but to use "clerk" because that is what the primary power defines it as.

**Mr Elliott:** In other words, "chief executive" is illegal. Is it?

**Mr Maye:** No, it is not a separately defined term at all. The terms are regarded as synonymous.

**Mr Elliott:** Is it not a good time to change that?

**The Chairperson:** It is tradition.

**Mr Maye:** We will be happy to consider that as we introduce our next Bill.

**The Chairperson:** Thank you very much indeed for coming along and answering our questions.