



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Local Government (Miscellaneous
Provisions) Bill**

17 September 2009

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mrs Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Daithí McKay
Mr Adrian McQuillan
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Mr Kevin Heaney)	
Mr Owen Mason)	Belfast City Council
Mr Ciaran Quigley)	
Councilor Joanne Bunting)	
Councilor Shaun Gallagher)	Northern Ireland Local Government Association / Arc21
Mr John Quinn)	
Ms Nora Winder)	

The Chairperson (Mrs D Kelly):

I welcome Mr Ciaran Quigley, director of legal services in Belfast City Council, and Kevin Heaney and Owen Mason, who are here as observers. However, if there is a difficult question, I am sure that Mr Quigley will pass the ball on.

Mr Ciaran Quigley (Belfast City Council):

It is my job to refer anything difficult. *[Laughter.]*

Mr Beggs:

Given that a new set of witnesses has arrived, are members required to declare our interests at this point?

Mr Weir:

We made the previous declarations when all witnesses were already in the room.

Mr Beggs:

That is fine. I was unaware of that.

The Chairperson:

Rather than make members declare their interests during each discussion on the Local Government (Miscellaneous Provisions) Bill, I will note that members have declared their interests.

Mr Quigley:

Thank you for the opportunity to brief the Committee on the Local Government (Miscellaneous Provisions) Bill. I am accompanied by Owen Mason, who is a policy officer who works with me, and Kevin Heaney, who is Belfast City Council's change manager. Kevin is dealing with the business of transition, and so on.

The Bill is in three parts, and I will discuss them in order. The three Parts are entitled "Contracts of Councils"; "Local Government Reorganisation"; and "Miscellaneous and Supplementary". Part 1 replicates existing legislation in Great Britain and clarifies the powers of district councils to enter into PFI and PPP contracts with the private sector. That is more relevant now as we enter a stage of very large waste disposal contracts. The legislation is coming at a critical time.

I act as corporate counsel for Arc21, and, therefore, I declare an interest. Arc21 will be represented by its chief executive, John Quinn. I have not seen John yet; I presume he is outside. John will comment on the Bill from an Arc21 perspective. Belfast City Council is one of the 11

members of Arc21, and, therefore, John, essentially, will speak for Belfast City Council on Part 1.

I do not need to bore the Committee with replication. However, there are several perceived gaps in Part 1, which deals with PFI. The good news is that those gaps have largely been picked up on by the Department in the proposed waste Bill. However, if the proposed waste Bill is to cover those gaps in Part 1, which deals with vires issues and powers of district councils, it will need to be introduced expeditiously, given the timetables for the letting of large contracts. Otherwise, we might face trouble when dealing with the lawyers who act for the contractors on big waste contracts. I am sure that John Quinn will replicate that view. I am happy to take questions as we go along.

Part 2 of the Bill, in general terms, deals with local government reorganisation. There are four Chapters in Part 2. Chapter 2 creates a framework whereby the Department may give directions that prohibit existing councils from disposing of land or entering into capital or non-capital contracts over specified thresholds, which will be specified by regulation. Chapter 3, which provides for the creation of the proposed —

Mr Weir:

If I may interrupt, it would be more helpful if members could follow your references. I know that those matters are covered under Chapters, but it would be useful if you were to refer to the individual clauses.

The Chairperson:

Members could follow the witnesses' written submission, which helpfully sets out the clauses.

Mr Quigley:

I am not speaking to the written submission. I have speaking notes, which I will give to the Committee.

The Chairperson:

That would be helpful, thank you.

Mr Quigley:

I am making more general comments.

The Chairperson:

We will hear your general comments, and members will have to do their best.

Mr Quigley:

I am happy to be interrogated on the detail.

Part 2 is in four Chapters. Chapter 1, clause 9, is simply the introduction on which I have no comment. Chapter 2 contains clauses 10 to 13. That simply creates a framework for the Department to give directions to prohibit the existing councils from entering into contracts. That includes contracts for capital works and non-capital works over thresholds that will be specified by regulation.

Chapter 3 contains clauses 14 to 16. Those provide for the creation of proposed statutory transition committees. Again, they provide the Department with the power to make regulations on how those committees will be set up. I do not intend to get into the detail of those regulations, because they do not yet exist. However, the power in the Bill to give directions and to make regulations seems to be drafted in a general way. Therefore, the Department will have the power to make directions in relation to all the existing councils and to make regulations for all the statutory transition committees. However, it is not entirely clear whether that power would extend to giving directions or making regulations in relation to individual councils or statutory transition committees.

I make that point because Belfast City Council does not claim any special status in the review of public administration (RPA). I emphasise that it is affected by the RPA as much as everyone else. I say that in case anyone thinks that it is claiming privileges, which it is not. However, Belfast City Council is in a slightly different legal position because 25 of the 26 councils are, effectively, merging in clusters. Belfast City Council is not merging with any other council, but it will assimilate territory if the Boundary Commission for Northern Ireland's recommendations go through, and that remains to be confirmed.

If those recommendations go through, Belfast City Council will extend its boundary to take in parts of Castlereagh, Lisburn and a tiny part, I think, of North Down. However, it is not merging with the existing Lisburn or Castlereagh councils, and that legal difference needs to be reflected

in the legislation. Otherwise, the Department might not have a clear power to make special provision for circumstances in relation to ongoing, amicable discussions between Belfast City Council and the neighbouring Castlereagh and Lisburn councils. Therefore, the only substantive point about Part 2 of the Bill is that I would like the legislation to be clarified to ensure that that power exists. There is a simple legal mechanism to do that, which I have set out in my speaking notes, and which I will give to the Committee.

I do not want to pre-empt the Office of the Legislative Counsel, which would, I am sure, get extremely annoyed if I started to draft legislation. However, it would be extremely simple to put a new paragraph in clause 9 to the effect that the power of the Department to give directions in Chapter 2 and to make regulations in Chapter 3 will include the power to do so in relation to the circumstances of one or more specified councils. That is my main point. A simple legislative amendment could deal with that without upsetting anyone or creating a suggestion that there is an agenda, which there is not.

I hope that that is clear. The only other point that I wish to make concerns the powers in the enabling legislation to give directions to make regulations. We ask that the all the councils and the local government sector in general be consulted before any directions or regulations are finally made. There is a concern that there a set of regulations is waiting in the background to be issued as soon as the Bill comes into effect, without any further consultation with the local government sector. In order that we can be comforted that those concerns can be addressed, I ask that the local government sector be consulted. I do not speak for all sections of local government, but I think that local government in general would agree that consultation, as a general principle, is a good thing.

Clause 17, entitled “Severance payments to councillors”, is an enabling provision. Kevin Heaney has submitted particular comments about severance. I do not need to go into those, but, in general, we have no problems with that issue. Severance will be dealt with by regulations; this is an enabling Bill. That is why I ask again that when the regulations are made, councils be consulted on the detail of the regulations so that they can make informed comment on the issue rather than simply issuing a high-level note.

I know that the Committee previously commented on the subject of clause 18, entitled “Acquisition of land otherwise than by agreement”. The shorthand for that is “vest”, which

always gets people exercised. When the old Pollution Control and Local Government (Northern Ireland) Order 1978 was revoked by the Waste and Contaminated Land (Northern Ireland) Order 1996, a mistake happened, because the previously existing power to compulsorily acquire or vest land was dropped and was not reinstated. That has now been picked up in the Arc21 submissions, and both Arc21 and Belfast City Council are glad to note that that power has been reinstated. The power now extends to the regional subcommittees — Arc21 and the Southern Waste Management Partnership (SWaMP) — both of which have legislative status as joint committees. Therefore, Belfast City Council, as a member of Arc 21, would welcome that, as, I think, would SWaMP.

Tomorrow morning, I will attend a meeting of Belfast City Council's policy and resources committee to follow up on a query about clause 18 — whether it will mean that Arc21, for example, could vest land belonging to Belfast City Council. I have noted that that has been an issue in the past. The short answer is no; it could not. Under the terms of reference of the subregional waste groups, one of the principles, which I drafted, is about consensus, and it says that any big decisions have to be approved by all the partner councils. The conspiracy theory that Arc21 is going to vest Belfast City Council land does not stand.

I am sorry for the confusion about the document that we submitted from Kevin Heaney's office. I wanted to take the opportunity today to get the high-level points across rather than bore members with the detail of lawyers' drudgery.

The Chairperson:

Thank you very much, Mr Quigley. When should the proposed waste Bill be in place in order to avoid the problems that you mentioned?

Mr Quigley:

John Quinn is better placed to answer that. Through Arc21, we are embarking on the third phase of the procurement process. The procurement process is governed by European law, and, because of the amount of money that is involved, it is an extremely complex process.

We are about to kick off with the invitation to submit design solutions. I stand to be corrected by John Quinn, but I understand that Arc21, which is leading the field in all of this, has shortlisted three tenders, so it is getting serious. The three consortia involved in tendering will

submit detailed design solutions, which will have to undergo a lengthy consideration process. However, it is now 2009, and my understanding is that, by next summer, we will enter into dialogue with lawyers to set up the contracts. Again, I stand to be corrected by John, but that means that the waste Bill needs to be in place by next summer.

When I talk about gaps in Part 1 of the Bill, although there are a number of supplementary points, I have identified two major issues that must be picked up. First, the joint committee, or groups of councils that are working together — Arc21 has 11 councils — will have to sign up as guarantors to big contracts. They will also have to give guarantees. Where is the legal power for, for example, Ballymena to give a warranty for, or guarantee, the business of Carrickfergus or Belfast? That is a major issue. I am concerned that lawyers on the other, counterpart side might raise that as a substantive issue, and, because of the current nervousness of the banks about their own situation, that might prejudice in some fashion the deliverability of those contracts. Therefore, I urge members to expedite the waste Bill as much as possible, although I understand that that is an argument for a different day.

Mr Weir:

Thank you for your evidence, Ciaran. I shall begin with the acquisition powers. Some of us in the wider area of Arc21 would have been happy had the conspiracy theory been right. I do not know whether Mr Kinahan agrees. Nevertheless, your interpretation of how Arc21 works is quite right, and those who have a conspiracy theory that clause 18 will compel Belfast City Council to do particular things are fairly wide of the mark.

With respect to the widening of acquisition powers — last week, we heard evidence from Craigavon Borough Council, which holds a similar position on the matter — there is a lot of merit in what you suggest. However, to play devil's advocate, if that was felt to be a good idea, first, would there be an opportunity to put that wider power into subsequent legislation? Secondly, my only concern with widening that power is that when the Bill was put out for consultation, the urgent need to get it through became apparent. Therefore, were the Bill to be amended from having one specific power to a general-purpose power, there could be an argument that the whole thing would have to go out to consultation again, because such an amendment would go beyond a legislative-level amendment.

Mr Quigley:

In our submission to the Department on the draft Bill, we picked up on that point. We said that, as a matter of principle, we would prefer the power to compulsorily acquire land to extend across a range of statutory functions. The existing legislation means that you have to look at various pieces of enabling legislation in order to discover whether a power to vest land exists. For example, you will find a power to vest in The Recreation and Youth Service (Northern Ireland) Order 1986, but when you look at other pieces of legislation, no such power exists. That touches on the power of general competence in dealing with land.

My view is that the matter should be picked up in the next RPA legislative phase, which is the reorganisation Bill. The reorganisation Bill will deal with the more constitutional issues of local government. It was supposed to have been out by now, but there has obviously been a delay. It would probably not be feasible to deal with that power in this Bill, because that would lead to consultation problems and would perhaps delay the Bill, which no one wants. However, I stress that there are a lot of issues that need to be picked up in the reorganisation Bill.

I have argued previously for powers of general competence on the wide range of work that councils do. Not everyone agrees with that argument, and the riposte now is that a power of well-being will be granted through community-planning provisions. However, I believe that there is a difference between a power of well-being and a power of general competence. I may be ranting at the winds on the matter, but I maintain my position as a lawyer in local government. Power of well-being is fine and dandy as far as it goes, but local government should be given the means to go about its business in a proper, efficient and resourceful way. That means that it should have general powers in relation to its functions. I do not mean that local government should have continental-style powers to do anything that it wants to unless someone refuses. However, there should be a general power to do a range of things regarding its statutory functions; that is a slightly different point.

The Chairperson:

Thank you.

Mr Weir:

I have other questions.

The Chairperson:

Will you make them as quick as possible?

Mr Weir:

I thought that we were scrutinising legislation.

The issue of general competence and general well-being is a debate for another day. However, I was a little surprised by your comments about the impact of statutory transition committees on consultation with councils for two reasons. First, a list of questions containing detail on the specifics of governance and the constitution of statutory committees has already been sent to my, and presumably every other, council. Secondly, local government has drafted what will effectively form the basis of the regulations. Policy development panel A, which is composed entirely of local government councillors, drafted that. A member of Belfast City Council has always been one of the 10 people on that panel. The representative soul of the people who advise the panel comprises the chief executives of local government, so local government officers are also involved. The fruits of their labour have been sent to local councils, so I was a bit surprised by what you said about the regulations.

I suppose that Belfast is in a slightly grey area as regards its attitude to some aspects of the RPA. As you have acknowledged, it is not a merger, but a new legal entity will be created. I am not convinced that people in Lisburn or Castlereagh regard it as satisfactory that they will simply be assimilated into the new council. It almost bears the hallmarks of Germany's assimilation of Austria. Rather than simply taking the decisions and then consulting the people of Lisburn and Castlereagh, do you not believe that areas that are due to come into an enlarged Belfast council should be formally represented on any transition group in Belfast City Council?

Mr Quigley:

I attended a couple of policy development panel A meetings, and I understand that it has drafted the principles and so on, and I have no problem with that. My only concern is to make sure, from a lawyer's point of view, that I see the detail of the regulations before they become law. It is my experience that the detail of legislation can sometimes depart from what people thought they were going to get. As a lawyer, therefore, I would like to have that opportunity on behalf of my council, Belfast City Council, to have a look at and to be consulted on that detail. That is the best practice that has been adopted by Departments over the years.

With regard to Lisburn and Castlereagh councils: I thought that “assimilation” was a kind word, because it sounded better and kinder than “incorporation” or “takeover”. However, whatever the word, I am sure that it will be a coming together in friendship and harmony.
[Laughter.]

In the spirit of that friendship and harmony, our chief executive convened an inaugural meeting a few weeks ago between representatives of Belfast, Castlereagh and the Castlereagh/Lisburn transition committee. Another meeting has been arranged for October.

I am glad to report that the discussions were friendly and noted the points that Mr Weir raised. There was consensus that we needed to take on board the issues that were raised. Belfast City Council’s policy and resources committee is its transition committee. However, I think that we have tentatively agreed — and Kevin can correct me if I am wrong — that members from the Lisburn/Castlereagh transition committee will be on our transition committee. Have we agreed that?

Mr Kevin Heaney (Belfast City Council):

No.

Mr Quigley:

We have not agreed that? *[Laughter.]* I thought that I was getting away with that. I should not have brought you.

Mr Weir:

You are starting to sound like the Executive.

Mr Quigley:

We were going to negotiate with them; is that the case?

Mr Heaney:

No —

The Chairperson:

We are enjoying the craic, but if we could just keep to the business.

Mr Heaney:

The current position is that there has been a joint agreement that there will be a joint committee forum of delegated representatives from the Lisburn/Castlereagh transition committee to the Belfast City Council transition committee. They will meet on a formal basis, initially every two months. They will then devise a joint programme of work, which we will talk about at our next meeting in October, to examine transition-related matters. Belfast City Council's response to the Local Government (Miscellaneous Provisions) Bill recommended that that type of engagement mechanism should be formalised in the legislation to ensure that —

Mr Weir:

Will that body, in effect, become a transition committee for that area?

Mr Heaney:

It will be a joint transition committee, representing Belfast council's transitional committee and the Lisburn/Castlereagh transition committee.

Mr Boylan:

Thank you for your presentation, and I am glad to see that Belfast is not getting any special treatment. As an Armagh man, I would have taken a wee bit of offence at that. You spoke about consultation. Obviously, NILGA has been playing a major role, and the key is that councils are fully equipped to deliver those functions.

I am getting a sense that things are perhaps not going right. I am off the council now, but my understanding from council officers and panel members is that things are moving forward in consultation and discussion. Obviously, there is a time frame, but it seems to be going OK. Are you saying that there seem to be a few problems that we need to address, because time is of the essence; or do you feel that contributions from councils are not going so well on the ground? Local councils have the responsibility, and they played a major role in this. You spoke about proper consultation. I thought that a pretty good body of work was already ongoing.

Mr Quigley:

I am talking about the consultation on the specific directions and regulations that are to be made. This legislation is, in large part, framework or enabling legislation. In other words, regulations and directions will be made or given under this legislation. I am simply saying that councils want to be consulted on the detail of that.

One hears different stories about relationships with NILGA. Belfast City Council works with NILGA, which carries out an important role on behalf of local government. I suppose that there are other sectoral interests, but Belfast City Council has worked closely with NILGA. Nora Winder from NILGA is here today to talk to the Committee. I have spoken to Nora in the past couple of days, and I am happy with what she is saying to the Committee.

Mr Boylan:

Thank you; I just wanted clarification.

Mr Kinahan:

You mentioned that we should ensure that councils are kept up to date on changes. I wonder whether we should give councils a monthly summary. I am concerned that if we tell councils about certain matters, we will end up re-discussing them a month later. Our council was concerned about being kept up to pace all the way through the RPA, particularly on waste matters. That area is so big that we were not always in the picture and, therefore, delays were more likely because we did not know what was happening.

The Chairperson:

We can put that matter to the Committee when the witnesses leave.

Mr Dallat:

My concerns have passed with the passage of time. I was worried that we would create an international incident between Germany and Austria. However, I am now convinced that it is Belfast and Castlereagh. *[Laughter.]*

The Chairperson:

I thank the witness for the presentation.

We can deal with Mr Kinahan's comments about whether the Committee has a role to keep councils informed or whether that is a departmental responsibility.

Mr Boylan:

That is why I sought clarification; work is ongoing, and NILGA is the body that should keep councils informed. Is Mr Kinahan saying that that is not happening? NILGA plays a major role and, perhaps, there is a gap that we do not know about.

The Chairperson:

We can write to the Department to ask about its mechanisms for updating councils, whether through NILGA or by individual council.

Mr Beggs:

We could place a large burden on our staff if we ask them to produce an additional set of briefing notes. We should, perhaps, make councils aware of the proceedings and how they can check our minutes and any documents that we have received. Someone who wants to follow matters more closely can do so. Other than that, it would place a big burden on our staff.

The Chairperson:

We should, perhaps, write to the Department and ask about the current system. The NILGA representatives will, no doubt, read the transcript of today's meeting, and, if any gaps exist in that communication process, they will let us know. Do members agree with that approach?

Members indicated assent.

The Chairperson:

We move to a briefing on the Local Government (Miscellaneous Provisions) Bill from NILGA and Arc21. I ask Committee staff to note members' declarations of interest in relation to their council membership. Members will note that NILGA and Arc21 have similar views on the Bill and have asked that they be allowed to brief the Committee jointly. That may be helpful.

I welcome Councillor Joanne Bunting, chairperson of the RPA policy development panel A. She is a member of Castlereagh Borough Council. I also welcome my party colleague Councillor Shaun Gallagher, who is from Derry City Council and is chairperson of the NILGA waste

working group. I welcome Ms Nora Winder, NILGA's director of policy and strategy, and Mr John Quinn, who is the chief executive of Arc21. You are all very welcome. You have 10 or 15 minutes to brief the Committee, after which we will take questions and comments from members. I invite you to make your presentation.

Councillor Shaun Gallagher (Northern Ireland Local Government Association/Arc21):

Thank you and good morning, Chairperson. We are grateful for the opportunity to appear before the Committee and outline the local government position on the Local Government (Miscellaneous Provisions) Bill. The Bill has three parts: today, we will address the first two parts. John Quinn, chief executive of Arc21, and I will talk about council contracts. Councillor Joanne Bunting, chairperson of the RPA policy development panel A, and Ms Nora Winder, NILGA director of policy and strategy, will address local government reorganisation.

First, I will confirm that, on the whole, NILGA broadly supports the provisions of the Bill. We would, however, like to use this time to make a few specific comments. As chairperson of the NILGA waste working group, I want to raise some issues about additional powers that are being contemplated in the waste Bill and the provisions that are designed to remove any concerns that contractors and financiers might have about entering into long-term service contracts.

The Department is aware of our comments, as we had previously submitted them in response to the written consultation on the draft Bill and, more recently, to the consultation on the proposals for a waste Bill. Those comments relate in particular to the granting of warranties, guarantees and indemnities, and the granting of cross-indemnities and acceptance of joint and several liabilities. The preamble in respect of the formal consultation on the draft waste Bill made reference to pre-consultation discussions with local government prior to the earlier consultation on the draft Local Government (Contracts and Compulsory Purchase) Bill, now renamed the Local Government (Miscellaneous Provisions) Bill, in which the Department acknowledged that:

“the draft Bill may not provide sufficient assurances for prospective contractors and financiers.”

In addition, it explains that the Department sought legal opinion which advised that:

“it would be very prudent (even if not essential) to make appropriate legislative provision in relation to these issues.”

Those are the issues of guarantees, warranties, indemnities, and joint and several liability. Given the obvious critical nature of those elements, we are disappointed that those provisions

have been omitted from the Local Government (Miscellaneous Provisions) Bill and are now being contemplated in the later draft waste Bill, despite strong representations by local government during the consultation. Unless there is a strong rationale for not doing so, we would encourage the Committee to consider inclusion in this Local Government Bill, rather than incur the inevitable delay which would result by deferral to the waste Bill.

We understand that Royal Assent for the Local Government (Miscellaneous Provisions) Bill is scheduled for November 2009, with the draft waste Bill following by June 2010. Alongside the issue of local government waste infrastructure procurement, those dates are likely to coincide with the most intense dialogue stage of the tendering process for the waste management groups. From a commercial and competitive perspective, we believe that, although the June date is sufficient to allow financial close and award, the earlier date would potentially enhance the confidence of the bidders and financiers who will be selected to enter the final stage of those competitions and, hopefully therefore, contribute to the most economically advantageous solution. Furthermore, the earlier date would allow final bidders to undertake due diligence in a timely fashion and reduce the risk of timetable delay.

Consequently, unless the legislative process is deemed to be compromised or materially delayed by the inclusion of those elements in this Bill, we consider there to be commercial advantage in “banking” the additional vires more than six months earlier in the procurement process.

Accordingly, we seek the addition of the following elements into the Bill, subject to their inclusion not delaying or comprising the Bill’s passage. First, the addition of a paragraph to clarify either that the councils/joint committees have express power to grant warranties, guarantees and indemnities, or that part 1 of the Bill should be extended to cover stakeholder agreements and collateral guarantees. Secondly, the addition of a paragraph to clarify that the councils/joint committees have express power to grant cross-indemnities and to accept joint and several liability, or that Part 1 of the Bill should be extended to cover stakeholder agreements and collateral guarantees.

I will now hand over to Councillor Joanne Bunting, who will outline further concerns, particularly in relation to work carried out by policy development panel A.

The Chairperson:

Thank you, Councillor Gallagher.

Councillor S Gallagher:

It was very technical.

The Chairperson:

It has to be heard. Thank you.

Councillor Joanne Bunting (Northern Ireland Local Government Association/Arc21):

Thank you for this opportunity. NILGA members, through their work on policy development panel A, developed proposals to inform the content of clause 14, entitled “Statutory transition committees: constitution”. We are pleased that the Minister took the proposals on board and that he has reflected the panel’s views in that clause. We fully support its implementation. That is all I have to say on the matter, so I will pass you to Nora Winder, who is the director of policy and strategy for NILGA.

The Chairperson:

Thank you, Councillor Bunting. This is the point at which a number of us have to declare an interest. *[Laughter.]*

Ms Nora Winder (Northern Ireland Local Government Association/Arc21):

With respect to clause 17, “Severance payments to councillors”, at this stage, I would like to recognise that the National Association of Councillors (NAC) is taking the lead in lobbying for and agreeing a severance package for councillors. NILGA supports the NAC’s position.

NILGA supports the provision in the Bill, but our members strongly endorse a centrally funded severance scheme, which must be introduced simultaneously with amended co-option legislation to allow councillors to make informed choices on the way forward. NILGA’s members would urge the Department to liaise, as necessary, to ensure that the required legislation is put in place as a matter of urgency, and NILGA supports the view that the scheme should apply during the period from January 2010 until the date of the local government elections in May 2011. I shall pass you to Councillor Gallagher, who will sum up and finish the presentation.

Councillor S Gallagher:

Much of the detail of the outworkings of the legislation will be set out in subsequent subordinate legislation. NILGA would strongly urge the Department to ensure that local government bodies are consulted, in accordance with good practice, in the drafting of relevant, detailed regulations.

We hope that our submission is considered favourably by the Committee, and our delegation is happy to answer any questions. If they are difficult ones, we will give them to John Quinn.

On behalf of the local government sector in Northern Ireland, I again wish to record our appreciation for the invitation to submit evidence to the Committee and, obviously, I thank you for the opportunity to address members today.

Mr Boylan:

Thank you for your presentation. Nora, you are very welcome. Nora and I worked together on Armagh City Council. As I was co-opted out, I was wondering whether you have looked into that in the severance package. *[Laughter.]* I take that as a flat no, so there is no need to respond.

In light of the presentation concerning NILGA reporting back to councils and councillors properly understanding what is coming down the track, how is that relationship working and are you delivering on those goals? We need a proper, fit-for-purpose service, and we need people to be properly trained to deliver the new functions. I was wondering, therefore, whether all local councils are tied into the process from NILGA's point of view and how it is working. You may respond generally.

Councillor S Gallagher:

In fairness, most councillors rely on NILGA to keep them informed about goings-on. Presently, there is good communication. Once a month, through NILGA, each elected member gets an update on what is happening in all the Committees and strands of government at Stormont. Since those updates have been introduced, it has been a lot easier to understand exactly what is going on.

Mr Boylan:

Is there still a gap in filtering information from central government down, or is the body of work continuous?

Councillor Bunting:

The strategic leadership board (SLB), which comprises members from central and local government, has developed a communication strategy. We recognised that there were some weaknesses in that area, so we developed a communication strategy, which should filter down to everybody. Obviously, we have no control on whether people read and pay heed to what they are given, but we have taken steps to ensure that as much information as possible is circulated and that people are afforded the opportunity to feed back. Likewise, we hold events; a capacity-building programme is envisaged. We hope that all those actions will address what has not been great communication to date, but which should now be greatly improved.

Mr Boylan:

You have just raised another point. You are right: whether or not people read information, there are group leaders in each council, and they have a responsibility to report back.

Mr Weir:

I see a lot of familiar faces here. Shaun, you spoke about additional powers and amendments. Am I right in thinking that your first preference would be for those additional powers to be incorporated into the Bill, and if the Department, for whatever reason, thought that that was not possible, the fallback position would be to put them in the proposed waste Bill? Is that the pecking order?

Councillor S Gallagher:

Yes.

Mr Weir:

OK. The Committee is dealing with the issue of enabling powers for the statutory transition committees, which do not go into great detail. The more detailed stuff about transition committees will be in the regulations. Could Joanne or Nora comment on what would constitute detailed transition guidance that would form the basis for regulations; what work has been ongoing on with policy development panel A and the SLB on how transition committees would be constituted and operate? What has been the level of local government involvement? What is the extent of political consensus on those issues?

The Chairperson:

Easy questions there.

Councillor Bunting:

Just those minor issues? NILGA looked at a number of issues. We considered the level of membership of transition committees and how people should be appointed. At one stage, the Minister asked us to consider whether the membership was producing the appropriate proportionality. He also asked us to look at whether the membership should follow the initial guidance, which was that each constituent council should have equal representation. We produced proposals, which said that our view was that there should be proportionate representation if we are to go forward in partnership and if there was not to be a feeling of one council taking over another.

That was not the position of all parties, but we stipulated in our discussions that, where a party position differed, that was recorded and sent further up the line, because it was important that party positions were recorded. We also looked at inclusivity in representation and ways to address that with regard to membership. We were acutely conscious that a democratic election had taken place, so we were trying to ensure that there was inclusivity and proportionality in accordance with a democratic election, and it was important that that principle was enshrined. To that end, we proposed a menu from which councils could choose: d'Hondt, Sainte-Laguë or single transferable vote (STV). Councils need to agree how they will progress that, and choose an option. If they cannot agree, the default mechanism is d'Hondt.

Another issue that arose during discussions about voluntary transition committees was that councils were using potentially different d'Hondt mechanisms, which caused concern. Therefore, NILGA recommended that whatever divisor method was used, it was applied consistently across each council in Northern Ireland.

The Chairperson:

Did you say that one of the options that the Minister initially suggested was that each party be represented at a council level, but that you decided to produce a different menu? Did I pick that up correctly?

Councillor Bunting:

It was not necessarily parties, but that there was proportionate representation of the membership of each constituent council.

Mr Weir:

At one stage, there was an issue about, for instance, Coleraine being a lot bigger than Moyle, and whether there should, therefore, be five or six members from Coleraine and only two or three from Moyle. However, there is also the view that if councils of different sizes are merging, they are, nevertheless, all separate and different entities, and membership should be level. Was that the issue to which you were referring?

Councillor Bunting:

Partly; yes. Part of the issue was that there was a maximum number of members on a transition committee, because, as you can appreciate, the larger the committee, the more difficult it becomes to have efficient and effective decision-making. Therefore, transition committees had a maximum of 16 members. That, for example, allowed Lisburn and Castlereagh to have eight members each. Where three councils were merging, it allowed those councils to have a minimum of five members each. However, four councils were merging in the Causeway Coast group, and they were only afforded perhaps four members each. We moved to a position that allowed the Causeway Coast group to have 20 members, so that each council was afforded the equivalent minimum number of members.

The Chairperson:

Gender balance was mentioned at a conference yesterday, but I am very pleased to see you here today.

Councillor S Gallagher:

We are very balanced. *[Laughter.]*

The Chairperson:

We are talking about reflecting the wider population, and 51% of the population is female. I appreciate that it is up to parties to put forward candidates, but what steps will councils be encouraged to take to ensure gender balance?

Councillor Bunting:

It is not for us to dictate who parties and councils nominate. We like to think that people consider issues such as gender balance, but that is not in our gift.

Mr Weir:

In addition to discussion on composition, there has been discussion on the powers, operation and checks and balances of the transition committees. More broadly, I appreciate that there may occasionally be differences of opinion across the five political parties that are involved. What is the level of overall consensus on the issues?

Councillor Bunting:

Are you asking about consensus on the checks and balances?

Mr Weir:

I am asking about consensus on the general operation of the transition committees, because, presumably, that will be the basis of the regulations.

Councillor Bunting:

There are a number of issues tied in with that, and I will try to make my answer as brief as possible. It is quite detailed, so bear with me.

The Chairperson:

If you want, you can supply the Committee with the detailed answer later.

Mr Weir:

It would be useful to get that detail in writing. However, has there been broad consensus on the general powers and work streams of the transition committees, or has there been a wide divergence of views?

Councillor Bunting:

It has, more or less, been agreed by everyone. There were a couple of very minor exceptions, and those were recorded. Where there were exceptions and party positions were recorded, it is important to note that any agreement was cross-community. To date, there have never been circumstances in which unionists have taken one view and nationalists have taken another. There

were general differences in party views, but those were minimal. By and large, the panel has worked extremely well on governance. We have, generally, found consensus.

The Chairperson:

I think that that answers Mr Weir's question. I am happy to accept a more detailed response later.

Mr Kinahan:

We raised concerns with the previous witnesses about the gap in the information reaching councils. I congratulate you on your very good circulation of information. However, in Antrim Borough Council, we have quite often found that not every councillor was up to speed when we reached a council meeting. Not every councillor had read everything, and decisions were being overturned or stalled. It meant that a thorough summary was required at every main council meeting, and I assume that that happens elsewhere. You may have sent the information to Antrim Borough Council in every conceivable form, but it had not been read, and the debate often got carried by whoever was in attendance. We need a thorough way of briefing.

My second point concerns the acceptance of joint and several liability, although I am not a fully trained lawyer such as Mr Weir and others. A council may not want to agree to something, but they will all have to act as part of Arc21. Surely that council will have to agree, because all the councils will have signed up to joint and several liability?

Mr Quinn:

That point is academic as far as the current regime is concerned. It affects joint committee structures, which concerns two of the three groups. The arrangement in both those groups is to have a supplemental agreement to the collaboration agreement, which is the joint committees' constitution. That has already been agreed by the member councils. Those points have already been addressed in the current governance arrangements; it is simply a matter of copper-fastening them in statute.

The Chairperson:

Ms Winder, do you want to address the issue of communication? That is what Mr Kinahan was addressing; he was asking for a better summary. Will Councillor Bunting answer that question?

Councillor Bunting:

Just so that I am clear, Chairperson: I presume that members are referring to decisions that are made by the voluntary transition committee. The minutes go back to the relevant council, which then decides whether the committee has gone too far.

Mr Kinahan:

It takes various forms. It also applies to decisions about waste that are coming through from Arc21 and the transition committees. The danger always seemed to exist that if certain councillors were there and others were not, decisions were being overturned. Therefore, communication is vital; we must find a means by which everyone knows what is happening. It comes down to a briefing at the relevant council meeting.

Councillor S Gallagher:

In fairness, Chairperson, waste management can be an emotive issue for councils. In my experience, every sore head has an opinion and expertise on waste management. Unfortunately, if that agenda gets ahead of the real agenda, it can create serious delays. The waste management groups and people like me have to remember that Europe has put down stringent deadlines for recycling and environmental impact measures, and rightly so. We should not get away from that. There will be difficulties and delays, but the bottom line is that there are no landfill sites left. We cannot throw waste on the ground anymore; we have to process it and learn to recycle. Government could do more to get that message out, because there is a gap there.

One example that I gave the Minister is that the Wake up to Waste campaign of a few years ago increased recycling by 7.5%. That is value for money in my opinion. In order for us to reach our targets, central government must come up to the mark. I know that there is a credit crunch, but people must be educated. Following that, councillors will realise what the broader issues are, and will hopefully get the message. I agree what has been said; if the message falls in the wrong place, it can get lost.

Mr Ross:

Not being a councillor, I am happy to talk about severance pay.

Mr Weir:

You might get lynched outside.

Mr Ross:

I might.

You said that you were happy to run from January 2010 until the date of an election. In part, severance is designed to recognise the service of councillors throughout the years, which is the correct thing to do. However, there is also the issue of those who were not going to stand for election to the new councils. Obviously, there must be co-option legislation in place to allow them to stand down, but then we can get new people in and build their capacity and knowledge in readiness for the new councils to go live.

Is there not a danger that, in running severance pay right up to the date of an election, councillors who have no intention of standing for the new councils will not stand down, even if the co-option legislation is in place? Was any thought given to making that window smaller, so that, if the co-option legislation is in place, those who are not going to stand will step away before the election so that new blood can be brought in?

Councillor S Gallagher:

Most of the political parties will go through a selection process during that period. For example, SDLP councillors are required to say whether we wish to stay on or take whatever package is available. Most political parties will work in the same way. The argument about the time period also allows political parties to bring in new people and give them an opportunity to see what they are getting into. That is a good idea, because I worry that we could lose all our good people in local government overnight if they all decide to go. A lot of experience could walk out the door. My point of view is biased, but over the past 30 years of the Troubles, local government kept the Province going.

Very few elected councillors have not experienced some impact on their private and home life. Some have experienced threats and so on. The bottom line is that we must recognise that. We all know that it is not a nine-to-five job and that in the past few months some people have adopted a kick-a-politician attitude. The bottom line is that an awful lot of people work very hard in local government; unfortunately, that is overlooked. That message has been lost during the past six months.

My worry is that people who make a positive contribution to local government will have had enough and will walk away from their role. The political parties have a job to do to convince the people whom they want to keep in local government to stay. It is in the interests of the Assembly to have strong local government. Once the situation beds down, the Assembly will benefit from strong local government.

Mr Ross:

I am not disputing the fact that we need strong local government, nor am I disputing the severance scheme. I am asking whether it would be beneficial to narrow the window of opportunity. Parties, of course, have responsibilities. However, we must ensure that new members receive training for the new councils, which have a responsibility to be up to speed on matters once the new system goes live. Would narrowing the window not be beneficial?

Ms Winder:

There is an issue of capacity. We are embarking on a major reform process in local government. If we lose all our councillors in one swoop, in January 2010, many people will need to get up to speed very quickly. We must not underestimate the size of the reform programme and the short time period. Therefore, by phasing in the severance scheme throughout 2010 and up to May 2011, the sector retains the capacity to oversee the change process for as long as possible.

The Chairperson:

A couple of members want to comment on the same point; please keep your comments brief.

Mr Kinahan:

I know that we are held back by being councillors. I am a councillor in Antrim Borough Council. However, I have only been there for four years, so am not included in the severance package. I take on board your comments that people who have been there for years know why councils made decisions and know the route that they have taken. We should, perhaps, consider a way to allow them to remain in a council as, for example, honorary members. That would allow them to remain in the system but not have a vote, allowing the councils to call on their experience, at least. That way, you would not kick them out the door and lose them.

Mr Dallat:

My understanding is that the severance arrangement has more to do with creating space for new

members who plan to spend a lot of time in new councils, rather than simply to reward those who have been there for a long time. I am somewhat confused about that now. It is best to resolve the severance issue as soon as possible to allow those who want to leave to do so.

Earlier, we mentioned the fact that the proposed Causeway Coast and Glens district council will have four extra representatives. Two of those four councillors are currently nationalist, but will become one big unionist. It is not often you get the opportunity to plan your own funeral; perhaps the extra places were deserved.

Councillor S Gallagher:

We must recognise long-term service in local government. The balance must be found to allow new blood to come in and to create new opportunities. Hopefully, politics will be appealing enough to attract the right kind of new blood.

Mr Beggs:

I have a question for John Quinn. Aspects of the Bill were designed to give confidence and assurances to the contractors and financiers who will build the new waste-management infrastructure. It has been indicated that it all needs to be finalised by June 2010. Earlier today, Ciaran Quigley from Belfast City Council said that Arc21 could proceed with a site only with the approval of individual councils. That is his interpretation of the guiding rules of Arc21. Does the current arrangement in which you have to operate enable a site to be established?

Will the necessary confidence be available for — [*Inaudible due to mobile phone interference.*] If you do not have a site, you do not have a plan, and nothing can happen.

Mr Quinn:

We have a raft of sites at our disposal. The issue about our governance relates to the issue of consensus around any major decision, including that of releasing a site that is in council ownership for waste-management purposes. That is only one of a range of decisions that require consensus. In a democratic process, the converse is that any council has a veto for those major decisions, including contract award.

That, I guess, can militate against an expeditious decision-making process in one organisation in which there are 11 — [*Inaudible due to mobile phone interference.*] To date, those

governance arrangements in all three groups have worked very well. The issues specific to — *[Inaudible due to mobile phone interference.]* The Belfast situation as referred to by Ciaran Quigley relate to the authority of a council to make available a site. In this case, Belfast City Council decided not to make its site available. However, that does not mean that there are not other sites in the public or private domain.

Mr Beggs:

Are you confident that you will be able to get approval for sites from owners so that the deadlines can be met at affordable prices?

Mr Quinn:

Yes.

Mr Boylan:

I have just one issue on which I need clarification, because the Committee will discuss in a moment how the Assembly can help his process.

Mr Kinahan said that reform is a major body of work, and we need to have local government staff fully trained in order to implement it. The Chairperson spoke about the role that local government has played. I am mindful that people out there are very busy, especially during the evenings. However, I am seriously concerned that the message seems not be getting across.

Is the greater part of the message getting across, whether through group leaders or whoever? I know that individual councillors will dispute different issues, but it is important for the Committee to have an understanding, because we will make a decision whether the message is being effectively communicated and how we can help in the communication process.

The Chairperson:

With regard to communication and getting messages across, I have been informed that someone has their mobile phone on, and it is continuing to affect the recording system.

Mr Dallat:

Chairperson, I can tell you every occasion that a phone rings, because I cannot hear anything. Under Section 75, and the provision of the loop system, I am entitled to know what is going on

here, and I cannot hear because there is constant buzzing in my ear. That is unfair.

The Chairperson:

I hope that the guilty party will take note, if any, but that message came from Hansard. People must turn off their mobile phones, please — not only for Hansard, but in order to allow Mr Dallat to hear.

Mr Dallat:

Well, if it continues, I will have to find out what my rights are in here. This is the only Committee in which I have experienced the problem.

The Chairperson:

OK.

Ms Winder:

I will give an overview of the way in which NILGA has attempted to include people. From a local government point of view, a lot of member and officer time has been devoted to policy development when working with the strategic leadership board on the reform process over the past year. We have tried, as far as possible, through the communication strategy, to ensure that the detail of what has been agreed is available for access by everyone involved with the process. There is information on the DOE and NILGA websites.

In addition, a monthly update on the reform programme is sent to all councillors and all councils, as well as a NILGA update, which gives a general overview of what is happening in local government.

A 12-month review was carried out of the strategic leadership board and the policy development panels. Although final agreement has to be reached on that report at the next SLB meeting on 16 October, there is general agreement on the development of a regional transition committee that will come into effect when transition committees become statutory. The regional transition committee would have a representative from each of the new 11 council areas. We hope that that will build the capacity and improve the communications flow so that messages go directly back to the transition committees that will have to make decisions.

Throughout the process, we are continually trying to improve on communications, and we take on board the point that was made earlier, which I will bring back as a summary. Unfortunately, however, some of these matters are very detailed, and some of that detail is lost if it is summarised too much.

Councillor S Gallagher:

I find the Assembly's website a bit difficult to use. It could be a lot more user-friendly. I admit that I am not very IT literate, but perhaps that website could be looked at.

The Chairperson:

The Committee agreed earlier to write to the Department about communication issues, and we will mention the website.

I thank you all for coming along and for your contributions.