



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Local Government (Miscellaneous
Provisions) Bill**

8 October 2009

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR THE
ENVIRONMENT**

Local Government (Miscellaneous Provisions) Bill

8 October 2009

Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr David Ford
Mr Danny Kinahan
Mr Ian McCrea
Mr Alastair Ross

Witnesses:

Ms Julie Broadway)
Mr Ian Maye) Department of the Environment
Mr Jim Stewart)

The Chairperson (Mrs D Kelly):

We move to the formal clause-by-clause scrutiny of the Local Government (Miscellaneous Provisions) Bill. Members have been e-mailed a copy of the draft Committee report, and a copy of the key issues from the report has been tabled. I apologise for the late tabling of so many papers, but our visit to Brussels meant that our deadline was moved forward. We will ask that papers not be given to members on the day of the Committee meeting so that they will have an opportunity to read through them.

The Committee Clerk:

Where possible, papers are e-mailed to members when we receive them.

The Chairperson:

Are members content to agree the key issues paper that has been tabled?

Members will be aware that concerns have been raised by local government councillors' representatives and by the community and voluntary sectors about funding and communications, as well as the Department's position on the inclusion of provisions for community planning and well-being. There is concern that that seems to have fallen off the scale. There is a need for local authorities to be consulted before the introduction of subordinate legislation. Concerns, which are detailed in the paper, have been raised about some clauses.

The Committee Clerk:

Most of those were issues that the Committee did not feel informed enough to agree last week, and further information was sought from the Department. I will update the key issues. I wanted to be satisfied that the Committee felt that all the issues raised during the scrutiny of the Bill had been included in the paper and that we had captured the Committee's concerns about them, because that paper will form the key part of the Committee's report on the Bill. I will amend or update the paper before members see it again as part of the full report.

The Chairperson:

Are members content at this stage?

Mr Ford:

I have one technical point; there is mention in the document of the three mechanisms for selecting representatives on statutory transition committees: d'Hondt, Sainte-Laguë or alternative votes. Surely the third mechanism is the single transferable vote?

The Committee Clerk:

I read something to suggest that it is.

The Chairperson:

Subject to that amendment, we will agree it at this stage. We will return to it.

The Committee Clerk:

This is not a full agreement to it; it is just to agree that we have covered all the key points that were raised last week. Those will change.

The Chairperson:

Members have copies of letters from the Department of the Environment with details of the mechanisms that the Department is using to brief local councils on local government reform, and a Northern Ireland Local Government Association (NILGA) reply on statutory transition committees (STCs). Members may wish to take those into account when discussing the clauses with officials. There is also an offer — if members are so inclined — to be included in the DOE/NILGA communications strategy. I think that that would be advisable. Do members have comments or questions? Are members content that this information be incorporated into the final Committee report on the Bill?

Members indicated assent.

The Chairperson:

As members will recall, on 1 October the Committee commenced its formal clause-by-clause scrutiny. Members agreed 14 clauses and the long title, and one clause subject to amendment. Eight clauses were left pending further information from the Department and, perhaps, for discussion. Today the Committee will consider the clauses that it did not formally agree at the meeting on 1 October: clauses 2, 9, 10, 13, 14, 15, 16 and 17. We now have an opportunity to consider each clause and decide whether we are content with it or whether we wish to seek an amendment to it. I invite the departmental officials to come to the table.

The Committee Clerk:

I advise members that the Department has provided a table of responses to the issues raised by the Committee. Presumably the officials will give us more information on those responses.

The Chairperson:

Mr Maye, I welcome you and your colleagues, Jim and Julie, back to the Committee.

Mr Ian Maye (Department of the Environment):

It is good to be back with you today. We have been working hard in the last week to address the issues that were raised by the Committee in discussions. We discussed several of those issues with the Minister before he left for the USA. We will take you through the considered responses. The Committee's suggestions were very constructive, and we have dealt with them as such. I will now pass over to Jim Stewart to take you through the responses line by line, and we will then be happy to answer questions.

Mr Jim Stewart (Department of the Environment):

The first issue was in relation to clause 2, "Certified contracts to be intra vires". The Department proposes to delete clause 2(5)(a) at Consideration Stage. The other issue that you raised was waste vires. The Department intends to bring forward additional waste vires provisions to be included in the Bill at Consideration Stage. I think that you are already familiar with those provisions.

Mr Beggs:

Will you clarify exactly what you mean by that? One area of concern that I had was the issue of unintended consequences that the certification process could go much wider than the waste contracts potentially than it was originally intended for to give confidence to those who would be involved in the considerable new waste infrastructure which is required.

How can we be certain that it cannot go much wider than that and give legal protection when it should not be given?

Mr Stewart:

I am not sure of the member's point. Would you like to expand on it?

Mr Beggs:

I have asked questions on the subject before. A certification process is applied to contracts after a certain date; that was the extent to which certification was required in order to prevent a challenge or make one more difficult. I want clarification on how that will apply specifically to the waste-infrastructure process, which will be under considerable scrutiny and which must therefore be more trustworthy rather than possibly being applied to many other signed contracts.

Mr Stewart:

In theory, the process could be applied to any contract entered into after the Bill becomes law. However, the Bill is aimed specifically at large waste infrastructure projects that are online at the moment and the contracts for which will be signed in 2011. Those contracts are being dealt with by the three local government joint committees: Arc21, SWaMP and the North West Region Waste Management Group.

There are clauses that apply contracts' provisions to Arc21 and SWaMP. Those provisions apply to the North West Region Waste Management Group as a council because Derry City Council, as the lead council, will take forward those contracts for the group.

Mr Beggs:

That has triggered a declaration of interest on my part: I am a member of Carrickfergus Borough Council.

The Chairperson:

Several members will want their interests to be noted.

Mr Maye:

The principle is that those clauses relate to waste-management issues; their scope is limited to waste-management matters.

The Chairperson:

I have asked the Committee Clerk to note the interests of all members who are members of local authorities. That has been done. Do members have any other questions on clause 2?

Mr Ford:

The Department's proposal to delete 2(5)(a) at Consideration Stage is fair enough, and the Committee can agree to that. However, I am not sure how our clause-by-clause scrutiny deals with the Department's statement that it intends to include additional waste vires in the Bill at Consideration Stage. Are we now also agreeing to the Department's making unspecified amendments in future that it has not shown the Committee at this stage?

The Clerk of Bills:

I will return to the Committee after considering that point in detail to provide formal advice. However, the Committee's primary responsibility is to agree its position on the clauses, subject to specific amendments from the Department. Therefore, the Committee can agree clause 2, subject to the Department's proposed amendment.

The Committee cannot take a position on other forthcoming amendments until it has seen them, but it may wish to note that it has discussed matters related to such amendments with officials and recommended that certain things be done. However, in respect of the detail, a formal position would be adopted after those amendments have been produced.

Mr Maye:

The Department intends to bring those proposed amendments to the Committee before Consideration Stage so that members can debate them and give the Department their views before the amendments are tabled.

Mr Ford:

I appreciate Ian's point, but at this stage we are approving only the clause, subject to the deletion of 2(5)(a).

The Chairperson:

Yes, and as per the amendments proposed.

Mr Ford:

As per the specific amendments, but we cannot give formal approval to anything else.

The Chairperson:

No.

Mr Stewart:

Clause 2 will not include the vires amendments; the vires will be included in separate clauses. I mention that because the issue has been raised in connexion with clause 2, but members may wish to consider clause 2, with the proposed deletion of 2(5)(a).

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

Clause 2, subject to the Department's proposed amendment, agreed to.

The Chairperson:

We note that there will be further consideration of waste vires.

Clause 9 — (Introductory)

Mr Stewart:

Clause 9 was parked pending further information from the Department on the implications for the citizens and resources of Lisburn and Castlereagh councils and their incorporation into the new greater Belfast local government district. Since our last meeting, officials met the Minister, who concurs with the Committee's views and has asked us to introduce proposals to ensure the direct representation of Castlereagh and Lisburn councils on the Belfast statutory transition committee. Any necessary amendments will be included at Consideration Stage. Lisburn City Council, Castlereagh Borough Council, the Belfast voluntary transition committees and, when established, the statutory transition committees need to continue to engage in order to address the transfer of assets between councils and to ensure the continued delivery of public services.

Mr Maye:

The principal point that the Minister wants to address is establishing a mechanism to allow district electoral areas (DEAs) that are directly affected by the Boundaries Commissioner report to be represented on the Belfast transition committee. Not necessarily every member should be represented, but a proportionate number from each of those two councils should be included.

The Chairperson:

The voice of the elected representatives has been heard, and the Minister has asked you to introduce a mechanism that meets the needs of the DEAs and that is in the best interests of the new committee.

Mr Ford:

That is an extremely helpful response to the points that we made last week. However, I am confused about the status of this clause, even more so given Eilis's earlier answer. On that basis,

we cannot agree the clause even though I am happy with the Department's sentiments.

The Clerk of Bills:

It is open to the Committee to agree the clause subject to the Committee's recommendation that the clause be amended to take account of its concerns. The Committee can note the Department's willingness to take the issue on board. The Committee cannot formally agree the clause subject to an amendment, because there is no amendment yet. However, the Committee can agree the clause subject to the Committee's recommendation that the clause be amended.

Mr Ford:

The Committee can accept the clause subject to the amendment rather than reject it or say that we have seen the specific wording. Is that right?

The Clerk of Bills:

I have not been terribly clear. The Committee can agree the clause subject to its recommendation that an amendment be produced to allay the concerns that councils raised and which are discussed elsewhere in the report. The Committee would not be agreeing the clause subject to an amendment, because there is no amendment. Furthermore, it is not possible for the Committee to agree to an amendment that it has not yet seen. The Committee can only agree the clause, subject to a recommendation that it be amended to reflect certain concerns. The Committee should set out those concerns, which are included in the papers, in its report.

The Chairperson:

We are agreeing the clause in principle, subject to the Committee's recommendations being incorporated into it. We look forward to the new amendment.

The Clerk of Bills:

The Committee will have a chance to read the amendment in the draft report, which the Committee Clerk will bring to the Committee. The Committee can leave that for a while, but that will have implications for the deadline.

Mr Ford:

How quickly can the sentiments that Ian expressed this morning be turned into a formal amendment?

Mr Maye:

We spoke to the legislative draftsmen this morning.

Mr Ford:

I presume that, apart from anything else, the amendment has to be agreed between the Department and the legislative draftsmen before being submitted to the Executive. We know how long that might take.

Mr Beggs:

Can the Committee suggest an amendment?

The Clerk of Bills:

It is open for the Committee's draft report to reflect that. I could work with the Committee Clerk on the draft report to reflect that, subject to the Committee's recommendation, an amendment be provided to achieve that objective. It is normal for a committee report to do that. It is also normal for Committees not to have received the wording of amendments that have been agreed at this stage from Departments. It is normal for a committee to reflect what it is recommending, to note a willingness on the part of the Department to take it forward, and to set out in the report what it wants to achieve by the amendment.

Mr Ford:

That is probably the best that we can do at this stage. I suspect that the Committee can probably agree an amendment more quickly than the Department. If the Department is willing to consider the amendment that we might propose, it might be the speediest way of resolving the matter. I am not sure whether Hansard will record that Ian is nodding at that point. *[Laughter.]*

The Chairperson:

Fortunately, I do not think that we are on camera this morning.

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

Clause 9, subject to the Committee's proposed amendment, agreed to.

Clause 10 (Control of disposals and contracts of existing councils)

The Chairperson:

We move to clause 10.

Mr Stewart:

Clause 10 is parked pending further information from the Department regarding the powers of statutory transition committees and the role of the Department during the transition period. When the statutory transition committees are established and the Department has made regulations under this clause, statutory transition committees will be responsible for considering applications from the constituent councils to dispose of land or to enter into contracts above specified sums. Statutory transition committees may give consent to such applications with or without conditions. Such consents are in addition to any other necessary statutory requirements.

During the transition period, the Department will mediate with statutory transition committees where agreement is not reached regarding the value of any consideration. The Department will also continue, subject to any necessary statutory transition committee consents, to consider applications for loan sanctions from existing councils.

The Chairperson:

Are members content with clause 10?

Mr Ford:

I have a question about when mediation will occur. Jim said that the Department will mediate with statutory transition committees where agreement is not reached regarding the value of any consideration. Can you tease that out a bit for me?

Ms Julie Broadway (Department of the Environment):

It is where consideration is other than the monetary terms.

Mr Maye:

If a disagreement between a council and a statutory transition committee comes to the attention of the Department, the Department can make a determination and mediate between the two, as it continues to have the final say on loan sanction applications.

The Chairperson:

What happens should the stalemate remain?

Mr Maye:

The Department will determine the outcome.

Mr Ford:

Is that what the clause says or would that be the effect of a departmental amendment?

Mr Stewart:

That is what the clause states at present.

The Chairperson:

It is simply further information; it is not an amendment.

Mr Ford:

Sorry, I may be particularly thick this morning, but clause 10(1) states that:

“The Department may direct that ... an existing council shall not, without the written consent of a specified statutory transition committee”.

What is being said is that the Department retains final powers.

Mr Maye:

Mr Beggs raised that at last week’s meeting. The fact that loan sanction approval is involved means that the final determination on whether the loan sanction is granted rests with the Department. However, the Department seeks to achieve agreement and consensus between the statutory transition committee representing all the councils involved in that group and an individual council. It seeks to blend the best of both approaches: encouraging local agreement on issues before they are brought to the Department, in which case the Department should be able to reach a decision and grant approval to loan sanction very quickly, while giving the Department the ultimate power, which it has at present, to consider whether the loan sanction is granted where there is continuing disagreement between the statutory transition committee and an individual council.

Mr Ford:

As I read it, 10(1) imposes on councils the additional burden of getting the approval of the statutory transition committee, without specifying the grounds on which the Department could overrule the transition committee.

Ms Broadway:

That provision relates to clause 11(3), which states that if a contract is disputed, the Department can mediate:

“Where the consideration or any of the consideration under a contract is not in money”.

Mr Ford:

I accept that. However, I mean where the consideration relates specifically to money and a capital programme. The concerns expressed — particularly by Omagh District Council — do not seem to have changed. If there is no agreement from the transition committee for capital expenditure, councils cannot go to the Department for loan sanction. Is that not the meaning of clauses 10 and 11?

Ms Broadway:

Yes.

Mr Ford:

Given what the Department has said about mediation, does that indicate willingness for it to consider an amendment that would allow an appeal to the Department by a council that felt aggrieved by a decision of an STC?

Mr Maye:

We will have to think about that and discuss it with the Minister.

Mr Ford:

It is a situation that we all hope will not arise. However, we are legislating for what might arise, not for what we hope will arise.

Mr Maye:

If a statutory transition committee attached conditions with which a council was not happy, the council would still be free to engage with the Department. When the Department receives the

proposal from a statutory transition committee, with the attached conditions, it will automatically be up to the Department, if representations are received, to determine the outcome.

Mr Ford:

That is the irony: if conditions are attached, an appeal is possible; if there is an outright refusal, an appeal is not possible.

Mr Maye:

That is a valid issue.

Mr Ford:

That seems to me — to use the technical term — cockeyed.

The Chairperson:

Rather than Mr Ford's proposing an amendment for next week, will the Department reflect on his comments and bring clause 10 back for further consideration? Does Mr Ford wish to propose an amendment to the Committee next week?

Mr Ford:

I would like the help of a legislative draftsman. *[Laughter.]*

Mr Maye:

As with the previous clause, it might be helpful for the Committee report to express those views, and we could work with them.

The Clerk of Bills:

Once again, it is open to the Committee to agree the clause, subject to a recommendation that the clause be amended to reflect members' concerns. We can work on the wording of that, and I offer my services in that regard for next week's draft report.

Mr Ford:

I am happy with that.

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

Clause 10, subject to the Committee's proposed amendment, agreed to.

Clause 13 (Contravention of direction)

Mr Stewart:

The Committee asked for further information regarding the enforcement of clause 13. The legal effect of clause 13 is that any disposal without the requisite consent would be unlawful. That reinforces that the proposed disposals must be referred to statutory transition committees for such consent.

The Chairperson:

Do members have any comments?

Mr Ford:

“See clause 9”. This is rehashing the same argument.

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment as discussed in relation to clause 9, *put and agreed to.*

Clause 13, subject to the Committee's proposed amendment, agreed to.

Clause 14 (Statutory transition committees: constitution)

Mr Stewart:

Clause 14 was parked, pending further information from the Department on representation on STCs, specifically the Lisburn/Castlereagh STC. An associated paper accompanies our clause-by-clause analysis; it was compiled by the Department and NILGA and sets out the representation on STCs.

The Chairperson:

We received that paper only this morning.

Mr Maye:

At last week's meeting, I undertook to share the papers that were produced by policy

development panel A. We sought and have acted on advice from policy panel A on the composition of the transition committees, so it was important to share papers that it produced.

Mr Stewart:

The paper is dated March 2009, so it does not reflect recent conversations of the Minister's in which he agreed that there should be representation from Lisburn and Castlereagh on the Belfast STC.

The Chairperson:

Who produced the paper?

Mr Maye:

Policy development panel A, after which it was considered and agreed to by the strategic leadership board. The paper forms the basis of our policy development; we stuck closely to the recommendations of the policy development panel, because it represented the consensus view across the five parties involved in the process.

The Chairperson:

Was the view unanimous or was there a majority vote?

Mr Maye:

In every respect, there was a consensus view across all the parties. There were one or two areas of slight disagreement on very minor issues, not on the principal points.

The Chairperson:

Thank you; it is helpful to know that.

Do members want to park clause 14 until next week, or, given that it has a consensus of support from all the political parties that are represented on the panel, are they content with the clause?

Mr Beggs:

I would prefer to park it.

Mr Kinahan:

I agree.

Clause 14 referred for further consideration.

Clause 15 (Statutory transition committees: functions)

Mr Stewart:

Clause 15 was also parked, pending further information from the Department on the cost to ratepayers of a staff redundancy scheme and the timing and the role of the STCs in the process.

The cost of staff redundancies is being considered as part of the business case being prepared by PricewaterhouseCoopers (PWC) on the reform of local government. The local government reform joint forum has been discussing the detail of a redundancy package and the respective roles of STCs, existing councils and the new councils in the decision-making process. That discussion will also address the timing of the scheme.

The Chairperson:

Do you have an answer on the cost to ratepayers?

Mr Maye:

Not yet. The PWC report will go before the strategic leadership board, and it will be shared with the party representatives on the board either tomorrow or Monday. At that point, we will have a much clearer idea of the scale of costs involved in officer severance.

In response to an Assembly question, my Minister said that he intends to publish the report once the strategic leadership board and the parties represented on it have given it consideration.

Clause 15 referred for further consideration.

The Chairperson:

Could members of the Committee be circulated with the PWC report as soon as possible?

Mr Maye:

Yes. We would be happy to do that.

Clause 16 (Power to modify existing legislation)

Mr Stewart:

This clause was parked pending further information from the Department about the strength and range of the powers that will go to the STCs and the role of local authorities after STCs have been set up. The main functions of STCs will be the appointment of chief executives designate and key staff for the new councils. They will be involved in, and have responsibility for, the setting of rates for 2011-12. They will also, where appropriate, determine the future status of some councils; in addition, they will be responsible for developing a short-term implementation plan for them. When STCs are established, existing councils will, apart from the functions that I mentioned, continue to be responsible for the day-to-day delivery of public services.

Mr Boylan:

I am sure that Mr Ford does not want to sit on the steps of Stormont to discuss the matter.

Mr Ford:

I notice that the Department still does not list setting the capital programme for existing councils as one of the main functions, but I think that we have covered that issue adequately.

The Chairperson:

I think so.

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

Clause 16 agreed to.

Clause 17 (Severance payments to councillors)

The Chairperson:

We remind ourselves of the guidance on this matter that was provided to members of the Committee who are also councillors.

The Committee Clerk:

The Clerk Assistant advised that this could in no way be seen as advocacy. The Committee is, in fact, merely agreeing the provision of the power to introduce a severance scheme if that remains

the position of the Executive.

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

Clause 17 agreed to.

The Chairperson:

Thank you all very much indeed.

Mr Stewart:

I think that clause 1 still needs to be agreed.

The Chairperson:

I wondered whether we had agreed it.

The Committee Clerk:

We agreed that last week.

The Chairperson:

No; we did not.

Mr Maye:

It was subject to deletion.

The Chairperson:

Yes, I wondered. Clause 1 was agreed, subject to the deletion of 1(3). The advice of the Office of the Legislative Counsel was that it will not be deleted but will be amended at Consideration Stage.

Mr Stewart:

It will be amended to read that:

“This Part applies to any contract which a district council enters into after the commencing of this section.”

The rest of the provisions in relation to the contracts will apply to any contract that is entered into after the date that that section has commenced.

Mr Beggs:

Earlier, I asked how it was restricted purely to the waste sector. That wording would apply to any contract, so can you highlight where the certification process could limit it to waste contracts?

Mr Stewart:

Certified contracts will not apply solely or specifically to waste-management contracts. The legislation is to deal with the extensive waste infrastructure schemes; it is purposely designed for those contracts. However, there is nothing to prevent a council from entering into a PPP contract and using those provisions if it needs to. However, PPP contracts require critical mass, perhaps as much as £20 million, to be viable.

It is unlikely that councils over here will have the same scope as local authorities in Great Britain to enter into such contracts. I am unaware of any contracts of that magnitude that councils might have that would make a PPP or PFI scheme viable. There is nothing to prevent them using those provisions for purposes besides waste if it were appropriate and if it were value for money.

Mr Beggs:

I am not aware of any such contracts either; but there is talk of an educational campus in Omagh, and a PPP arrangement of that scale could be put through in that instance. Does that mean that if it is signed after this date, it is legal and one cannot challenge it?

Mr Maye:

The provisions are specifically limited to the actions of councils and bodies associated with them; the previous management of councils, in particular, not the other bodies.

Mr Beggs:

What if the council negotiated such a contract?

Mr Maye:

If the council wished to do so, that would be all right. The PPP or PFI powers would be available for its other functions. This clause is to give a degree of comfort to the organisations that would be providing a service and the financial institutions that would be providing the money to make it happen for those companies. It is primarily a matter of giving comfort to those who would be

providing services to councils.

Mr Beggs:

Will the Department also have to approve any borrowings?

Mr Maye:

At present, we envisage that the clause will be needed only for major waste-infrastructure contracts. However, it is there for possible future use if there are other major contracts or if the new councils decide that they want to engage in PPP or PFI contracts.

The Chairperson:

Is this is an amendment or a deletion?

Mr Maye:

It is an amendment.

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

Clause 1, subject to the Department's proposed amendment, agreed to.

The Chairperson:

That concludes our scrutiny of the Bill. Thank you all very much for attending.