



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Local Government (Miscellaneous
Provisions) Bill**

13 October 2009

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

Local Government (Miscellaneous Provisions) Bill

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Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr David Ford
Mr Danny Kinahan
Mr Daithí McKay
Mr Adrian McQuillan
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Mr Ian Maye) Department of the Environment
Mr John Murphy)
Mr Jim Stewart)

The Chairperson (Mrs D Kelly):

I thank members for accommodating this meeting, which has been brought forward to 11.00 am. We have a quorum to proceed and to make decisions. I remind everyone to switch off their mobile phones. That is important for Hansard's purposes and for anyone who uses a hearing aid.

I invite members of the public to come into the room.

The agenda comprises one main item of business: to complete the formal clause-by-clause scrutiny of the Local Government (Miscellaneous Provisions) Bill. We shall proceed to the clause-by-clause scrutiny of the Bill.

Members will recall that on 1 and 8 October 2009, the Committee formally considered the Bill's clauses. The clause-by-clause consideration table has been provided at tab 1 of members' meeting packs. Also provided in members' packs is a copy of policy proposals from policy development panel A, at tab 2; and a copy of the draft Committee report, at tab 3. The report will be amended following the outcome of today's meeting and tabled for further consideration for the meeting on 15 October.

At our meeting on 8 October, members decided to refer clauses 14 and 15 for further consideration. Those clauses are at the top of the clause-by-clause table that provides the departmental response to Committee concerns. Members need to decide whether they are content with the response and content to agree to the clauses.

Departmental officials are present at today's meeting. I invite them to join us at the table. They are available to answer questions and to provide further information. I also note for the record that some Committee members are also members of local authorities. With the exception of Mr Boylan and Mr Ross, every other member who is present is a member of a local authority. Are members happy for that to be noted?

Members indicated assent.

The Chairperson:

Before we look at clauses 9, 10 and 13, we shall consider clauses 14 and 15. I welcome departmental officials Mr Ian Maye, Mr Jim Stewart, and Mr John Murphy to the meeting.

Clause 14 (Statutory transition committees: constitution)

The Committee Clerk:

Clause 14 was parked at our previous meeting. Information on it had been provided at the last

moment. Members decided to park the clause until a future meeting so that they would have time to read that information. The clause deals with the composition of statutory transition committees (STCs). The information provided more details on the structure of those committees. The question is whether members are happy to agree to the clause, now that they have had a chance to read the information.

The Chairperson:

I think that that was in relation to Lisburn and Castlereagh authorities having representation on the statutory transition committees of Belfast and Causeway authorities. Mr Maye, would you like to add anything?

Mr Ian Maye (Department of the Environment):

We are working with our lawyers and legislative counsel to develop a model, and we propose to bring forward amendments at the Bill's Consideration Stage, if the Committee has not done so, to enable the affected district electoral areas (DEAs) in Lisburn and Castlereagh to be directly represented as full voting members on the Belfast transition committee.

The Chairperson:

Members should take some comfort from the fact that it will be subject to draft affirmative proposals, not a negative resolution. Therefore, at Consideration Stage, there will be an opportunity to agree or disagree with the amendments that are brought forward.

Mr Kinahan:

Does that mean that we are parking this until we hear more?

The Chairperson:

We will agree the clause, but we will recognise that the amendment will be tabled and that it will be subject to affirmative approval. Is that the case?

The Committee Clerk:

That is not quite correct. The powers that clause 14 will bring forward will be subject to draft affirmative procedures. Therefore, any secondary regulations that come under that clause would have to go to the Floor of the House for affirmative approval, rather than by the negative procedure. That will enable Members to have more of an opportunity to make a decision on those

regulations.

The real problem is that members wanted more information on how the decision in respect of membership of the transition committees would be made. Information that you received from the strategic leadership board, which emanated from policy development panel A, provides information on that.

Mr Kinahan:

There is a good example at paragraph 17 of the paper, which describes how the SDLP made sure of its representation. That is good and should be kept in mind.

Mr Ford:

I have a problem with discussing clause 14 before we have agreed clause 9. Clause 14(4) states that:

“Those regulations shall ensure that the statutory transition committee in relation to a new council consists of members of the predecessor council or councils.”

“Predecessor council”, as defined in clause 9, does not deal with the Castlereagh/Lisburn problem within Belfast. We need to agree clause 9 before agreeing clause 14.

The Chairperson:

That is a helpful way forward. If members agree, we will move to clause 9 and come back to clause 14.

Clause 14 referred for further consideration.

Clause 9 (Introductory)

The Chairperson:

Clause 9 was parked on 1 October, pending further information from the Department regarding the implications for the citizens and resources of Lisburn and Castlereagh being incorporated into the new greater Belfast council. It was agreed on 8 October, subject to a recommendation, that the clause be amended to reflect the concerns of the Committee, and it was noted that the Department was willing to adopt that approach. Are we any further forward on that?

The Committee Clerk:

Based on your discussion last week, the Bill Clerk and myself, have made the suggested recommendation. You will find the recommendation for clause 9 in the table. Due to the shortage of time, it will be difficult to come forward with an amendment to the clause during Committee Stage, but the Committee will make a recommendation for an amendment to provide for direct representation of the existing councils of Castlereagh and Lisburn on the Belfast statutory transition committee.

Between now and the Bill's Consideration Stage, I will work with the Bill Clerk and bring to the Committee for discussion an amendment based on that recommendation.

The Chairperson:

A point was made about the strategic leadership board, and Mr Kinahan mentioned shortfalls in the representation of some areas.

The Committee Clerk:

Mr Ford's particular concern on the Castlereagh/Lisburn issue was that there would not be assimilation of four councils, but rather parts of existing councils.

Mr Ford:

There is a problem, because the current definitions of a successor council and a predecessor council assume that whole councils will merge. That does not apply to the new greater Belfast local government district. If we do not get that definition right, there will be problems with clause 14. For that purpose, I wondered whether we could add "except in relation to Belfast" to clause 9(2). However, the definitions for successor councils in clause 14 will still cause problems unless clause 9 is worded carefully. There are people who are paid more than me to work out such wording.

Mr Weir:

It may be useful to get the Department's view on the issue. If we tabled an amendment to clause 14 about the greater Belfast situation, I suspect that a similar amendment would be needed to clause 9 to deal purely with the greater Belfast situation. It should not be beyond the wit of the Committee or the Department to come up with a form of words to cover that situation. I am not asking the Department to write a blank cheque, but if there were amendments to both clauses that

dealt specifically with the Belfast/Castlereagh/Lisburn situation, I presume that it would be happy to accommodate them.

Mr Jim Stewart (Department of the Environment):

We are in touch with our colleagues in the Office of the Legislative Counsel about the necessary amendments. Although we have not received any definite instruction, the need to include representatives from Castlereagh and Lisburn councils on the Belfast STC will almost certainly require some amendments to clause 9 and clause 14. However, we have not yet received any details.

Mr Maye:

We are also very happy to work with the Committee Clerk and the Bill Clerk to work out the detail of the proposed amendments.

The Chairperson:

The concern about the assimilated parts is that the representatives who move onto statutory transition committees reflect the ward, rather than the whole council. That is an important principle.

Mr Weir:

That is a sensible way forward. There is also the quid pro quo: if the Belfast STC is to reflect the wards that it is assimilating, there should not be representatives of those wards on the Lisburn/Castlereagh STC. We cannot have a situation in which people get two bites at the cherry.

The Chairperson:

I have heard the concerns of both the strategic leadership board and the Committee.

The Committee Clerk:

Last week, the recommendation was that an amendment would reflect the concerns of the Committee. The hope was that the recommendation in front of members would reflect those concerns, but I sense that it is not specific enough. Can we reword it now, or in time for Thursday's meeting?

Mr Ford:

Clause 9(2)(a) and clause 9(2)(b) refer to:

“the whole or the major part of the district”.

In a non-legal way, although I look to my left to see if there is an instant legal response free of charge, I suggest that it may be possible to change that to:

“the whole or a substantial part of the district”.

Mr Weir:

There would then need to be a definition of “substantial”. For example, in my area, there are approximately 300 constituents for whom council representation will move from North Down to Belfast.

That would be more of a minor tidying-up than a substantial amendment. Therefore, “substantial” must be defined. I do not know the figures from Castlereagh and Lisburn, but to deal with this particular set of circumstances, it may be that “substantial” is defined as consisting of at least 15%, or 20% of the area from which it is moved.

Mr Ford:

I think that something around 10% would do.

Mr Weir:

Whatever it may be, a definitive figure must be agreed.

Mr Kinahan:

Is that proportionate?

Mr Weir:

No; it not just a question of that. There is no problem with introducing terminology. The issue is that there must be a definition of terminology such as “substantial” or “proportionate”, because one person’s view of “proportionate” may not be another’s.

The Chairperson:

The devil is in the detail, as usual.

Mr Weir:

From what I have gathered from Mr Ford's suggestion, the definition is needed to deal specifically with the Belfast/Castlereagh/Lisburn situation. That is the only case involving a proportionately large area.

Mr Ford:

It is to include the Lisburn and Castlereagh segments, while excluding the minor boundary tweak between Holywood and Belfast, or the minor issue around Banbridge with Newry/Down.

Mr Stewart:

I think that the Department can address that sort of detail in the statutory transition committee regulations, which we can produce later. If the Committee agrees that the Department can make the necessary amendments to allow the inclusion of representation from Castlereagh and Lisburn on the Belfast STC, we can address the detail of where those representatives should come from in the STC regulations.

Mr Ford:

That is fair enough. However, we must be absolutely sure that we properly define "successor" and "predecessor" councils, or the Department will be unable to draft the regulations.

Mr Maye:

The legislative draftsman is considering precisely that issue: how we circumvent that definitional problem.

The Committee Clerk:

The Committee may want to have another go at suggesting an amendment with which members are happy. Then they can agree the clause, and the amendment will be proposed between now and Consideration Stage.

Therefore, we could recommend an amendment to clause 9 that provides for direct representation of the existing parts of the councils of Castlereagh and Lisburn moving to Belfast City Council on the Belfast statutory transition committee, if not already represented.

Mr Ford:

At present, they are not already represented, so the last few words are not needed. Bearing in mind Peter Weir's point, must the primary legislation, as opposed to the regulations, take into account the issue that only the parts of Lisburn and Castlereagh that are moving to that new council should be represented on the Belfast statutory transition committee?

The Committee Clerk:

We could cover that in the proposed amendment, which will be brought back to the Committee when there is more time for discussion. What the Committee is debating is just a recommendation.

Mr Weir:

I am relaxed about whether a direct amendment or affirmative resolution covers specifically how representation will be drawn from particular wards or a district electoral area. In the case of Lisburn, I think that the bulk of a DEA is involved, so at some stage it may be necessary to list the wards.

Once the principle is established, I believe that the regulations should spell out the exact detail. If I understand it correctly, about six wards from Lisburn and nine or 10 from Castlereagh are affected. However, neither case involves complete DEAs. I believe that the Lisburn case involves six out of seven wards at Dunmurry Cross. The Castlereagh example takes in a DEA that is split between Castlereagh and Belfast. To take account of that may require a level of detail that is better included in regulations or by way of an amendment that introduces the principle, rather than the Committee's getting too specific in its recommendation. Does that make sense, or is that clearer?

The Committee Clerk:

On that basis, will you look at the recommendation as written?

The Chairperson:

Yes?

Mr Ford:

Sorry, will you just read it? Everybody else wanted me to say it, so I have said it for you.

The Committee Clerk:

It is the suggested recommendation that you have in front of you:

“For an amendment to provide for direct representation of the existing councils of Castlereagh and Lisburn on the Belfast Statutory Transition Committee.”

Mr Boylan:

That reads better.

The Chairperson:

It is clear anyway.

Mr Beggs:

Perhaps it should say:

“direct representation from the relevant boards”.

Without making that explicit, the representation could be from irrelevant wards.

The Chairperson:

It should be direct representation from the relevant wards, rather than from the council as a whole.

Mr Weir:

I am persuaded of the general logic of it being purely the wards. The only issue that might slightly muddy the waters is if, in one sense, Belfast is to almost absorb the representation from those councils. In which case, are there any implications for Castlereagh and Lisburn councils themselves? For example, would that affect roughly a quarter or 20% of their council areas? Are there any institutional issues? What I mean is this: are we simply accepting that, for example, all of the assets of Lisburn and all issues that affect that remain with Lisburn? For example, there may well be an issue for Lisburn staff who work in the areas that may be related to the entire council.

The Chairperson:

We are only discussing representation on the statutory transition committee. Ian, would you like to clarify this?

Mr Maye:

The suggested recommendation is in addition to a direct discussion and negotiation between the two sovereign transition committees on matters affecting staff, assets and liabilities. Both need to happen. I will pick up on the point that Mr Ford raised; there needs to be a mechanism to allow the representatives of those wards and district electoral areas to put forward their views on how Belfast should develop, since those people are moving into Belfast. Equally, there still needs to be a direct negotiation between the two transition committees as a whole on issues that affect the councils as a whole.

The Chairperson:

That seems rational. Are members content?

Mr Dallat:

As I have only recently joined the Committee, I am not terribly au fait with it. Has the Committee been focusing on those councils that are moving as a whole, but are perhaps transferring from one particular allegiance to another, to put it broadly? For example, two nationalist-controlled councils and two unionist-controlled councils will be brought together to constitute the new Causeway and Glens council area. Is there a need for anything in the Bill to ensure that the rights and assets of those who will be undergoing quite a transformation are protected?

The Chairperson:

That is not directly related to the clauses we are considering, but there are overall checks and balances that have to be addressed in the legislation.

Mr Weir:

At a broader level, it may be useful for Mr Dallat —

Mr Dallat:

You are always helpful to me.

Mr Weir:

That is what I was born into this life to do. In relation to the statutory transition committees, it has been agreed at policy development panel A that protections for minorities be put in place in

relation to things like call-in mechanisms and weighted votes in certain circumstances where something can be shown to be detrimental to one community or another. That has been agreed among all of the parties. The intention is for that to be in place for the establishment of the new councils, but it has also been agreed at policy development panel A that, whatever protections are put in place for the new councils would also, by way of regulations, cover the statutory transition committees. There is a nuclear option in case there is some attempt at some degree of abuse of position.

The Chairperson:

The policy panel A's deliberations on that point are at tab 2 of the papers and a number of mechanisms are outlined.

Mr Dallat:

I always rely on what Peter advises me, especially on such issues. It is unique, and the Committee understands that. So long as I have intimated my concerns about it, I will take all the advice that is available on how it will be achieved. It is better to mention it now, rather than have something happen in the future.

The Chairperson:

It will come before the Committee for further deliberation.

Mr Boylan:

I would like the Clerk to read over again where we are going to go with that issue.

The Chairperson:

We are at clause 9. Do members want to include this specification to the wards or not? I was left in some doubt.

Mr Ford:

There may be a technical difference in specifying wards or DEAs on the basis that the new boundaries do not coincide exactly with the old boundaries.

The Chairperson:

Could we say "relevant areas"?

Mr Maye:

DEA is probably the safest option, because individual members, as you know, are not elected to wards. The model that we are thinking of is that we identify the DEAs that are substantially affected and that then forms the pool from which candidates are drawn.

Mr Ford:

I accept the principles of how you are trying to operate. To take one example: Castlereagh East is a seven-member DEA, two wards of which are transferring to Belfast and five are remaining in Lisburn and Castlereagh. I am not sure how one starts to define that in the primary legislation, but I am sure that we could give the draftsman the job of putting it into the secondary regulations, and give him longer to do it.

Mr Maye:

It will be a matter for the regulations. The draftsman's job is to ensure that the clause is sufficiently wide to allow for specific arrangements to be put in place for Belfast, Lisburn and Castlereagh so that that issue can be addressed in the detailed regulations.

The Chairperson:

We seem to be agreed on the principle of inclusion. It is just a matter of finding a form of words to achieve that. However, it will be subject to affirmative resolution when there will be an opportunity for members who are not content to vote against it.

Mr Ford:

I still think that putting in the relevant DEAs is creating a problem. I think that, at this stage, it should be providing for representation from the councils, and the secondary regulations are words that should be precisely determined. There is not, strictly, a "relevant" DEA. I might know: am I not correct that all four DEAs of Castlereagh are affected, but only in small parts?

Mr Beggs:

That is a valid point.

The Chairperson:

So we are back to the original, where we started.

Mr Beggs:

We have made a clear marker as to what we are expecting in the regulations.

The Chairperson:

Yes.

Mr Ford:

We have informed the thinking of the Department by having this discussion in front of them.

Mr Weir:

I am glad that somebody is informed.

The Chairperson:

The suggested recommendation is for an amendment to provide for direct representation of the existing councils of Castlereagh and Lisburn on the Belfast statutory transition committee.

Do members agree that form of words?

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

Clause 9 agreed to.

Clause 14 (Statutory transition committees: constitution)

The Chairperson:

We shall return to clause 14. Are members content?

Mr Ford:

I am content, so long as the amendments to clause 9 cover the concerns that I raised previously about clause 14(4). The amendments will have to be done in a particular way to cover that, otherwise clause 14(4) may also have to be amended.

The Chairperson:

There two ways of doing it. We can accept it on the basis that clause 9 covers it, or we can make a recommendation similar to that made for clause 9. Members will see it in blue font in the table.

Mr Ford:

I am content with either option, so long as we recognise that it has to be done.

Mr Beggs:

Does the Department acknowledge that there is a preferred option?

The Chairperson:

We will check with the Department on that.

Mr Beggs:

For the record, Mr Maye is nodding.

Mr Maye:

It will need to be checked. I do not see any reason why you should not use the same form of words that you have agreed for clause 9.

The Chairperson:

The suggested form of words is:

“For an amendment to provide for direct representation of the existing councils of Castlereagh and Lisburn on the Belfast Statutory Transition Committee”.

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

Clause 14 agreed to.

Clause 15 (Statutory transition committees: functions)

The Chairperson:

We move to clause 15, which was parked on 1 October, pending further information from the

Department on the cost to the ratepayers of the staff redundancy scheme and the time and the role of the statutory transition committees in the process. There was a commitment to share with the Committee the PricewaterhouseCoopers report, but we have not yet received that.

Mr Maye:

Agreement has been sought from the Minister on the release of the report to the Committee. It is preferable that the Committee receive the report today, because it is also going to the members of the strategic leadership board today. Unfortunately, we did not hear back from the Minister in advance of the start of the meeting, but we hope to do so in the course of the day.

Mr Weir:

My informed understanding of the PricewaterhouseCoopers report is that it stretches to about 200 or 300 pages. Even if we were to receive it immediately, the best speed readers among us would have difficulty going through it.

Mr Maye:

The specific question was about the cost of redundancy for staff. Our best guess at this point in the economic appraisal is that it will be somewhere under £18 million. That is a worst-case scenario, and it is based on the premise that all of the people who are eligible will decide to leave or will not have a job in the new council.

Mr Weir:

My understanding is that the PricewaterhouseCoopers report was drafted on the basis of a worst-case scenario. The report also suggests a range of funding models. Is it not also the case that, as well as the one-off cost of redundancies, the councils will need fewer high-level staff? The number of councils will be reduced from 26 to 11, so there will be considerable revenue savings. Have you any indication of what those savings will be?

Mr Maye:

I have not seen the final version of the report, because it was going out only this morning. However, there were considerable offset savings, not only due to the need for less staff at senior levels across the new councils, but from other areas.

The Chairperson:

We will await the details with interest and see if the proof of the pudding is in the eating. However, that has not been the experience in the review of public administration to date. We are concerned about who will pick up the tab for the £18 million costs. Will that be foisted onto the ratepayer? Will central government pick it up?

Mr Maye:

We do not know yet. The purpose of commissioning the economic appraisal was to get a firm idea as to what the upfront implementation costs, the longer-term cash benefits and the known cash benefits would be. That will enable the Minister, with the benefit of advice from the strategic leadership board, to put a case to the Executive to put in place a funding mechanism and programme. Those decisions have yet to be made by the Executive, but the economic appraisal will stand at the heart of the case that our Minister puts forward to the Executive for a funding programme to be put in place.

The Chairperson:

Clause 15 allows only for regulations to be put in place that will facilitate the RPA.

Mr Ford:

To clarify, clause 15 does not prevent the Department from being the body that funds anybody's redundancy packages?

The Chairperson:

No.

Mr Ford:

Clearly, there is a particular issue for some cases of amalgamation of smaller councils where there could be quite significant costs, as opposed to, for example, Belfast, where, presumably, there should be no reason for redundancies at all. The application of those expenses is likely to be somewhat lopsided. If that is not picked up by the Department, it could create major difficulties in some areas.

The Chairperson:

Ian, do you want to respond to that?

Mr Maye:

I do not believe that there is much that I can add to what I have already said. The Minister and his colleagues in the Executive are conscious of all of those issues. Recent media reporting of the potential implications for ratepayers as a result of amalgamation have brought those issues into sharp relief for Ministers and others who are involved in the process, particularly members of the strategic leadership board.

The Chairperson:

There is further clarification to come. It will not impact on that particular clause, which simply allows for the winding up of older councils and the formation of new transition committees.

Mr Maye:

Mr Ford is correct: the clause does not determine who pays. It simply provides that councils act as the vehicle for paying redundancy costs to individual members of staff.

The Chairperson:

On that basis, therefore, are members content with clause 15 as drafted?

Mr Beggs:

Given the decision not to go with shadow councils, and to go with that route instead, I am content that that is appropriate.

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

Clause 15 agreed to.

The Chairperson:

We need to look again at clauses 10 and 13, which are in the table. Last week, the Committee agreed that those clauses be amended, subject to a Committee recommendation, to reflect its concerns. We now need to reach agreement on the recommendations for each of those clauses. Recommendations are in blue font in the central column of the table.

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

The Chairperson:

It is recommended that clause 10 be amended to allow for an appeals mechanism by which councils could challenge decisions made by statutory transition committees under the clause. Members will recall that the issue was the power of veto and whether member councils could have an appeals mechanism, which seems to be fair. Are members, therefore, content with the clause subject to that proposed amendment?

Mr Ford:

The only issue with that is whether the clause should specify to whom an appeal should be made, given that the final arbiters in those matters are the Minister and the Department. They have the responsibility to sanction loans. Therefore, obviously, appeals would be made to the Department. Perhaps it should be specified that appeals would be made to the Department, in effect, on the basis of the reasonableness of the transition committee's decision.

Mr Beggs:

I concur with that.

Mr Weir:

That could be done fairly easily. Presumably, part of that is the power of direction that is given to the Minister and the Department. In a sense, the Minister would be able to intervene at any stage. There is concern that there would be gridlock in some transition committees.

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

Clause 10 agreed to.

Clause 13 Contravention of direction

The Chairperson:

It is recommended that clause 13 be amended to provide clarification of the definition of "successor council", as per clause 9.

The Committee Clerk:

The problem with clause 13 was directly related to the definition in clause 9.

Mr Ford:

There is direct read-across.

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

Clause 13 agreed to.

The Chairperson:

The Committee Clerk and the Bill Clerk will now prepare Committee amendments in accordance with those recommendations for discussion and approval by the Committee before the Bill's Consideration Stage. Members have also been provided with the draft Committee report on the Bill. That will be updated to reflect today's proceedings and tabled for members' formal approval at our Committee meeting on Thursday 15 October 2009. Thank you very much.