

# Committee for the Environment

## Report on the Local Government (Finance) Bill (NIA 14/09)

Together with the Minutes of Proceedings, Minutes of Evidence and  
Written Submissions Relating to the Report

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**Session 2010/2011**

**Second Report**

### Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2007 has been as follows:

Mr Cathal Boylan (Chairperson) <sup>9</sup>  
Mr Thomas Buchanan <sup>7,8,13</sup>  
Mr Trevor Clarke <sup>15</sup>  
Mr Willie Clarke <sup>14</sup>  
Mr John Dallat <sup>5</sup>  
Mr Danny Kinahan <sup>3,4</sup>  
Mr Patsy McGlone (Deputy Chairperson) <sup>6,9,10,12</sup>  
Mr Alastair Ross <sup>1</sup>  
Mr George Savage <sup>2,16</sup>  
Mr Peter Weir  
Mr Brian Wilson <sup>11</sup>

<sup>1</sup> On 21 January 2008, Alastair Ross was appointed as a Member and Mr Alex Maskey ceased to be a Member

<sup>2</sup> On 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner

<sup>3</sup> On 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong

<sup>4</sup> On 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty

<sup>5</sup> On 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher

<sup>6</sup> On 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson

<sup>7</sup> On 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke

<sup>8</sup> On 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan

<sup>9</sup> On 12 April 2010 Mr Cathal Boylan was appointed as Chairperson and Mrs Dolores Kelly ceased to be a Member

<sup>10</sup> On 12 April 2010 Mr Dominic Bradley was appointed as Deputy Chairperson

<sup>11</sup> On 13 April 2010 Mr Brian Wilson was appointed as a Member and Mr David Ford ceased to be a Member

<sup>12</sup> On 21 May 2010 Mr Patsy McGlone replaced Mr Dominic Bradley as Deputy Chairperson

<sup>13</sup> On 13 September 2010 Mr Thomas Buchanan replaced Mr Jonathan Bell

<sup>14</sup> On 13 September 2010 Mr Willie Clarke replaced Mr Daithi McKay

<sup>15</sup> On 13 September 2010 Mr Trevor Clarke replaced Mr Ian McCrea

<sup>16</sup> On 1 November 2010 Mr George Savage replaced Mr Roy Beggs

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# Executive Summary

## Purpose

1. This report sets out the Committee for the Environment's consideration of the Local Government (Finance) Bill.
2. Members sought a balanced range of views as part of their deliberations on the Local Government (Finance) Bill and requested evidence from interested organisations and individuals as well as from the Department of the Environment.
3. The Committee made five recommendations having identified the following key issues.

## Key Issues

4. The introduction of the Local Government (Finance) Bill was welcomed by the Committee. The Committee considered that the key issues relating to the Bill were:
  - Delegated powers of the Bill
  - Role of the chief financial officer (Clause 1)
  - Concept of robustness in relation to estimates (Clause 4)
  - Robustness of the audit process (Clause 5)
  - Designation of reserves as controlled reserves (Clause 7)
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- Social clauses in public procurement contracts

## **Delegated powers of the Bill**

5. The Committee sought advice from the Examiner of Statutory Rules in relation to powers within the Bill to make subordinate legislation.

6. The Examiner of Statutory Rules advised that there were a range of powers to make regulations or orders in the Bill all of which were subject to negative resolution or draft affirmative procedure. In his opinion these powers were subject to an appropriate level of Assembly scrutiny with the exception of the order-making power in Clause 24(9).

## **Role of the chief financial officer (Clause 1)**

7. The Committee considered a range of views on the necessity to separate the roles of chief executive officer and chief financial officer within a council. While acknowledging that separation would be in line with best practice in the interests of good governance, the Committee expressed concerns about the financial implications for smaller councils in particular.

8. Research commissioned by the Committee identified that of the 17 councils that replied, 16 advised that they could re-designate an existing officer as the chief financial officer and only 1

would have to recruit eternally. SOLACE had no strong opinion on the designation but was keen that the role of council chief executives as chief accounting officers should not be undermined.

9. The Department indicated that while this Bill did require a council to designate a chief financial officer, it would be for the council to decide if this role could be discharged by an officer with other significant responsibilities. The Department advised that it does intend to specify a requirement for separation of the roles of chief executive and chief financial officer when it brings forward a Local Government (Reorganisation) Bill.

10. The Chartered Institute of Public Finance and Accountancy (CIPFA) recommend that the chief financial officer be required to hold an accountancy qualification, be a member of the councils' senior management team and be a member of a recognised professional accountancy body, as detailed in the CIPFA statement on the 'Role of Chief Financial Officer in Local Government'. The Department confirmed that it does intend to refer councils to CIPFA's statement.

11. The Committee agreed that the proposals in the Bill requiring councils to designate a chief financial officer, along with guidance recommending that the designated officer hold membership of a recognised professional accountancy organisation, were appropriate at this stage under the current council model.

#### **Concept of robustness in relation to estimates (Clause 4)**

12. Some organisations who made submissions to the Committee sought clarification on the concept of robustness. The Department advised that the designation of a chief financial officer who would have regard to Department guidance, accountancy standards and the Prudential Code for Capital Finance in Local Authorities issued by CIPFA would ensure robustness.

#### **Robustness of the audit process (Clause 5)**

13. The Committee questioned the robustness of the audit process and agreed to make a recommendation that in conjunction with the implementation of this Bill, the audit process should be reviewed and if necessary, strengthened.

#### **Designation of reserves as controlled reserves (Clause 7)**

14. The designation of council reserves as controlled reserves proved unpopular with the majority of organisations who made submission to the Committee as they viewed such action as contrary to the objective of the Bill in giving local authorities freedom to manage their financial affairs. These organisations contended that existing Departmental guidance in relation to maintaining, as a minimum, a District Fund balance of between 5 and 7.5% of the net operating expenditure was a sufficient control.

15. The Department offered assurances that there are no plans to impose a control on reserves and this power would only be used if it was deemed that a council was acting improperly with respect to financial responsibilities. This regulation would also be subject to consultation with stakeholders and the Committee.

16. The Committee accepted the Department's indication that it does not plan to impose any controls on reserves and that this clause will only be used if the Department becomes aware of a council acting improperly.

## **The necessity for guidance with regard to the power of a council to borrow (Clause 11)**

17. The Committee expressed concern that there is insufficient guidance from the Department for council borrowing. The Department advised that subordinate legislation – the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011 – will be drafted and will impose a duty on councils to have regard to CIPFA's 'Prudential Code' which sets out clear governance procedures.

18. The Committee welcomed the development of this subordinate legislation which will provide guidance to councils. The Committee will scrutinise this legislation and review the consultation responses in due course.

## **Requirement for the Chief Financial Officer to report on the affordable borrowing limit (Clause 12)**

19. Some organisations recommended an explicit requirement for the chief financial officer of a council to report to the council on the view of the affordable borrowing limit. The Department confirmed that the CIPFA 'Prudential Code' does require the chief financial officer to review the council's borrowing limit and to report to the council.

20. The Committee was content with the Department's response

## **Circumstances necessitating the imposition of borrowing limits and a definition of 'national economic reasons' (Clause 14)**

21. Some organisations who provided evidence to the Committee considered that limits on council borrowing should only be imposed when a council can be shown to have clearly disregarded its duty to determine and keep under review the amount they can afford to borrow. A definition of 'national economic reasons' was also sought.

22. The Department advised that it would be not practicable to provide such a definition but gave assurances that such circumstances would only arise in an unusual and serious situation and that the imposition of a limit on council borrowing would require the consent of the Department of Finance and Personnel.

23. The Committee was content with the Department's explanation on these issues.

## **Definition of a long term finance in the context of a credit arrangement and the long term liabilities associated with closure and aftercare costs of landfill sites (Clause 17)**

24. Some respondents to the Committee recommended that trade creditors be excluded from the definition of a credit arrangement as they should not be regarded as long term debt.

25. The Department advised that draft subordinate legislation the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011, would provide further details on credit arrangements and confirmed that trade creditors would be excluded presuming that those creditors were paid within a 12 month period.

26. Clarification was also sought on whether the long term liabilities associated with the closure and aftercare costs associated with landfill sites would be treated as credit arrangements. The Department advised that provision for such costs must be made with the council budget and the Committee accepted this response.

### **Use of capital receipts (Clause 22)**

27. Some respondents stated that there should not be a requirement within the Bill for capital receipts to be applied in the first instance against any money borrowed by the council for the purposes of acquiring that asset. This view was shared by the Committee.

28. The Department advised that draft subordinate legislation; the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011, would provide further details on capital receipts and addressed the Committee's concerns by providing flexibility in how receipts could be used. The Committee welcomed the development of this subordinate legislation and recommended that it be implemented as soon as possible.

### **Guidance on investments (Clause 23)**

29. Some respondents commented on the lack of Departmental guidance in relation to investment. The Department advised that guidance on investment had been drafted and would be introduced under Clause 25. The Department also highlighted that guidance on investments is contained within the CIPFA 'Prudential Code'.

30. The Committee welcomed the development of this guidance.

### **Level of Assembly scrutiny in relation to the appointment of a receiver in respect of unpaid council borrowings (Clause 24)**

31. Following advice from the Assembly's Examiner of Statutory Rules, the Committee sought an amendment to Clause 24(9) of the Bill which provides an order-making power deals with appointment of a receiver in respect of unpaid council borrowings of more than £10,000.

32. The Committee sought to amend this Clause in order that any amendment to the amount of £10,000 at which a receiver may be appointed, would be subject to draft affirmative procedure rather than negative resolution as contained within the Bill. As any substitution of a different amount would bring about a direct amendment of what is on the face of the Bill, the Committee considered that a higher degree of Assembly scrutiny was appropriate.

33. The Department indicated that it was content to bring forward an amendment to make an order under this provision subject to draft affirmative procedure.

### **Review of the statutory formula used for allocation of the rates support grant (previously 'resources grant') and ring fencing of the rates support grant to prevent in-year cuts (Clause 27)**

34. There were two issues raised in relation to the rates support grant. Firstly, some respondents held the view that the formula for grant allocation would need to be immediately reviewed in the event of implementation of the Review of Public Administration to ensure that it continues to meet its objectives. The Department advised that as the timetable for local government reform has not yet been confirmed, the existing arrangements must remain, however the Central

Statistics and Research Branch carry out an equality monitoring exercise on the resources element of the grant on an annual basis.

35. Secondly, many respondents expressed concerns about future resourcing of grants. It was highlighted that the rates support grant (formerly the 'resources grant') provides additional resources to councils whose wealth falls below the Northern Ireland average, so any cuts to this grant will reduce resources in those areas even further, potentially resulting in increases to rates. Concerns were also expressed about the in-year cuts implemented in July 2010 which impacted heavily on these councils with lower wealth levels as well as presenting significant budgeting issues. The Department advised that these in-year cuts were unique and exceptional.

36. The Committee accepted that while future cuts to grants cannot be ruled out, however held the view that in-year cuts present significant difficulties for local councils and therefore agreed to recommend an amendment to Clause 27 to prevent in-year cuts to the rates support grant.

### **Payments due by councils to Departments (Clause 30)**

37. The Department advised the Committee that this clause provides for the deductions from grants where a council owes money under a statutory provision to a Northern Ireland department or public body, to the Consolidated Fund or to a public fund under the control of a Northern Ireland department or public body.

38. The Committee suggested that there should be an early warning system for payments due by councils and the Department agreed to undertake to provide notification to any council affected by the invoking of this clause as early in the process as possible. The Committee was content with the Department's response.

### **Flexibility of payments for part time councillors (Clause 31)**

39. The Committee held the view that payments to councillors must be flexible to accommodate those who wish to hold the position of councillor on a part time basis. The Department confirmed that there is no expectation that the role of councillor must be full time and that the Bill provides councils with flexibility on payments, subject to a maximum set by the Department.

40. The Committee was content with the information and explanation from the Department.

### **The use of gender neutral language (Clauses 32 and 39)**

41. The Committee noted that Clauses 32 and 39 of the Bill refer to the 'chairman' and 'vice chairman' of the council. In keeping with the Assembly's commitment to the use of gender-neutral language in the drafting of legislation, the Committee agreed to recommend amendments to Clauses 32 and 39 to replace the terms used with the gender neutral terms 'chairperson' and 'vice-chairperson'.

### **Expenses incurred in attending conferences and meetings (Clause 34)**

42. The Committee was informed that Clause 34 had been requested by the National Association of Councillors who advised the Committee that councillors feel that they are representative of their councils when they carry out this duty as they would be nominated by their local authority in the first instance and therefore wished to have it included in the new Finance Bill.



43. The Committee was content with this response

### **Costs of establishing an independent remuneration panel to advise on payments to councillors and expenses to be supported by appropriate evidence (Clause 35)**

44. While the Committee welcomed the independent nature of the panel, grave concerns were expressed by the Committee regarding the costs of establishing and maintaining the proposed independent panel to advise on payments to councillors. The Department highlighted that there had previously been criticism on the lack of independent advice provided to the Minister of the Environment in respect of councillors' remuneration and that the establishment of such a panel would reflect practice in other devolved regions. The Department estimated the costs at £20,000 - £25,000 per annum; however these costs would not be incurred annually as the panel would only meet when directed by the Minister. Costs would be borne by the Department.

45. Secondly, some respondents also sought transparency in expense claims. The Department advised that draft subordinate legislation; the Local Government (Payments to Councillors) Regulations (Northern Ireland) 2011, would impose a requirement to provide receipts proving actual expense incurred. The Committee welcomed the development of this subordinate legislation and recommended that it be implemented as soon as possible.

### **Non-councillors receiving expenses (Clause 36)**

46. Clause 36 indicates that in relation to receiving expenses incurred, the definition of 'councillor' includes members of committees or sub-committees whether they are members of the council or not. The Committee asked for clarification of this provision.

47. The Department explained that this allowed councils to make payments towards expenses incurred by non-councillors in respect of attendance approved by the council at conferences and meetings which, in the opinion of the council, relate to the interests of the district or its inhabitants. This provision repeals and replaces similar legislation in the Local Government Act and therefore does not represent a change of policy.

48. The Committee was content with this explanation.

### **Review of the current limits on expenditure for special purposes (Clause 37)**

49. Several respondents in their evidence noted that the Department intends to introduce a power of wellbeing in the forthcoming Local Government (Reorganisation) Bill but considered that in the interim the current limits on expenditure for special purposes are too low. The Department agreed to review the limits and advised that any uplift would be implemented through subordinate legislation which would be subject to public consultation.

50. The Committee welcomed the Department response and requested early sight of the draft legislation.

### **One-off payments for public appeals (Clause 39)**

51. Some respondents considered that the Bill should be amended to allow for payment for public appeals to be made in 'circumstances' rather than 'particular events'. The Department

advised that the purpose of this provision is to allow councils to make one-off payments for particular events rather than regular payments to causes in general.

52. The Committee were content with the Department's response and agreed that to amend this Clause as above would alter the intention of the Clause.

### **Subscriptions to certain local government associations and other bodies (Clause 41)**

53. The Committee expressed concerns that public funds would be used to pay for an officer of the council to be a member of a professional body associated with their job, where membership of that body was a requirement to hold the post. The Committee held the view that if an applicant for a position was required to hold membership of a body in order to be considered for the job, then it should be considered to be the individual's responsibility to pay for the subscription throughout their career. The Committee commissioned research to establish the current situation in local councils and to find out the usual practice in the private sector and on receipt of the information agreed the clause.

54. In light of the research information, the Committee agreed to accept the clause as drafted.

### **Public Private Partnerships and Public Finance Initiatives**

55. Several organisations who made submissions to the Committee commented on the lack of powers within the draft Bill to allow councils to engage new initiatives and models for service delivery such as Public Private Partnerships (PPP), Public Finance Initiatives (PFI) or Local Asset Backed Vehicles (LABV).

56. The Department confirmed that Section 1 of the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 does allow councils to enter into contracts for the provision of assets or services and this includes PPP/PFI type contracts.

57. However, Clause 24 of this Bill does specifically prevent councils from entering into LABV arrangements as it provides that it is unlawful for a council to use property as security for borrowing. The Department considers that this provision is necessary to protect council property.

### **Social clauses in public procurement contracts**

58. The Committee received evidence which sought provision within the Bill for inclusion of social clauses in procurement contracts. The Committee strongly supported this view.

59. The Department advised that the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 imposes restrictions on councils which prevent them from including social clause in contracts. However the Department confirmed that subordinate legislation has been drafted under the Local Government (Best Value) Act (Northern Ireland) 2002 to lift that restriction and the Minister for the Environment hopes to consult on this draft legislation in early 2011. The Local Government Best Value (Exclusion of Non-Commercial Considerations) (Northern Ireland) Order 2011 will go to public consultation as is usual practice.

60. The Committee welcomed the development of this subordinate legislation and recommended that it be implemented as soon as possible.

## **Recommendations**

## **Robustness of the audit process (Clause 5)**

61. The Committee questioned the robustness of the local government audit process while considering Clause 5; In-year review. Some members felt that in order to ensure that action could be taken to prevent the mismanagement of council funds, as opposed to addressing such an event after it had taken place, the audit process needed to be strengthened.

62. The Department assured the Committee that guidance is provided to councils on good management practices, including the establishment of scrutiny and audit committees. In addition members recognised that there is an onus on councillors to ensure good financial management.

63. The Committee accepted that it would be inappropriate to legislate within this bill on the audit process itself but agreed to make a recommendation that in conjunction with the implementation of this Bill, the audit process should be reviewed and if necessary, strengthened.

## **Level of Assembly Scrutiny over changes in relation to the appointment of a receiver in respect of unpaid council borrowings of no less than £10,000 (Clause 24)**

64. The Committee, after considering the advice of the Assembly's Examiner of Statutory Rules, held the view that the substitution of a different amount at which a receiver may be appointed should be subject to draft affirmative procedure. It was felt that the highest level of Assembly scrutiny should be afforded to this power because an order under this provision in Clause 24 would bring about a direct amendment of what is on the face of the Bill in respect of a jurisdiction of the High Court.

65. The Committee agreed to recommend an amendment to Clause 24 in order that the power given to the Department to make an order under this provision would be subject to draft affirmative procedure.

66. On 25 November the Committee considered and agreed the following Departmental amendment to Clause 24 accordingly:

Clause 24, Page 8 Line 27

Leave out 'made subject to negative resolution'.

Clause 24, Page 8 Line 29

At end insert –

'(10) An order shall not be made under subsection (9) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.'

## **Ring Fencing the Rates Support Grant in-year (Clause 27)**

67. Concern was expressed that in-year cuts to the rates support grant, as occurred in June 2010, presented significant financial difficulties for local councils. In-year cuts have serious implications for council financial planning as estimates of the income and expenditure of the council during the next financial year have already been authorised and these estimates are used to set the amount of expenditure required to be raised by means of rates paid to the council. A

consequence of in-year cuts is that councils must increase rates to retrospectively meet the shortfall in expected income.

68. In addition, as the rates support grant is only paid to council areas where the wealth per head of population falls below the Northern Ireland average, in-year cuts result in these councils having no option but to raise the rates in subsequent years, putting their ratepayers at a further disadvantage.

69. In light of these concerns, the Committee agreed to recommend an amendment to Clause 27 which would ensure that once the amount of the rates support grant payable to a council for any financial year was determined, that it would not be reduced during that financial year.

70. On 25 November the Committee considered and agreed the following Committee amendment to Clause 27 accordingly:

Clause 27, Page 9, Line 26

At end insert –

'and shall not be reduced during the financial year in question'

### **Gender neutral drafting (Clauses 32 and 39)**

71. The Committee queried references to 'chairman' and 'vice-chairman' in Clauses 32 and 39 and was advised by the Department that this was in keeping with the terminology use in existing local government legislation.

72. The Committee noted the commitment of the Assembly to adopt gender neutral drafting in its legislation agreed to recommend amendments to Clauses 32 and 39 to replace the terms used with the gender neutral terms, 'chairperson' and 'vice-chairperson'.

73. On 25 November the Committee considered and agreed the following Departmental amendments to Clauses 32 and 39 accordingly:

Clause 32, Page 12, Line 9

Leave out 'chairman' and insert 'chairperson'.

Clause 32, Page 12, Line 10

Leave out 'vice-chairman' and insert 'vice-chairperson'.

Clause 32, Page 12, Line 12

Leave out 'chairman or vice-chairman' and insert 'chairperson or vice chairperson'.

Clause 39, Page 14, Line 28

Leave out 'chairman' and insert 'chairperson'.

Clause 39, Page 14, Line 29

Leave out 'chairman' and insert 'chairperson'.

## **The inclusion of social clauses in public procurement contracts**

74. The Committee received evidence which called for provisions to be made in the Bill for the inclusion of social clauses in public procurements.

75. The Department advised the Committee that the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 imposes restrictions on councils which prevent them from including social clauses in contracts. Under the Local Government (Best Value) Act (Northern Ireland) 2002, the Department has drafted subordinate legislation to lift that restriction. The draft legislation and attendant guidance is currently being considered by the Department of Finance and Personnel to ensure that it does not interfere with general or European procurement legislation. The Minister for the Environment hopes to be in a position to consult on this draft legislation in early 2011. The Local Government Best Value (Exclusion of Non-Commercial Considerations) (Northern Ireland) Order 2011 will go to public consultation as is usual practice.

76. The Committee welcomed the development of this subordinate legislation, requested early sight of the subordinate legislation and recommended it be progressed rapidly.

## **Introduction**

1. The Local Government (Finance) Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 27 April 2010.

2. The Minister of the Environment (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Local Government (Finance) Bill would be within the legislative competence of the Northern Ireland Assembly'.

3. The main aim of the Bill is to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland. The greater part of the current legislative framework concerning local government finance is in Part V of the Local Government Act (Northern Ireland) 1972 ("the 1972 Act"). Although this has been updated by subsequent legislation, provisions in relation to borrowing and council funds are mostly unchanged. This Bill will replace Part V of the 1972 Act.

4. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 18 September 2008, 23 April 2009, 3 December 2009, 11 March 2010, 10 June 2010, 9 September 2010, 16 September 2010, 23 September 2010, 14 October 2010, 21 October 2010, 25 November 2010 and 2 December 2010. The relevant extract from the Minutes of Proceedings for these meetings are included at Appendix 1.

5. The Committee had before it the Local Government (Finance) Bill (NIA 14/09) and the Explanatory and Financial Memorandum that accompanied the Bill.

6. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 5 May 2010 in the Belfast Telegraph, Belfast Telegraph North West edition, Irish News and News Letter seeking written evidence on the Bill.

7. A total of 10 organisations responded to the request for written evidence and a copy of the submissions received by the Committee is included at Appendix 3.

8. The Committee was first briefed by officials about the consultation stages and policy development of the policy areas covered by the Bill on 3 December 2009. The Committee was also briefed by the Association of Local Government Finance Officers (ALGFO), the Northern Ireland Local Government Association (NILGA), Ards Borough Council, Derry City Council and Derry, Lisburn City Council and the Transition Committee for Derry and Strabane District Council.

9. The Committee conducted its formal Clause by Clause scrutiny of the Bill on 25 November 2010.

### **Extension of Committee Stage of the Bill**

10. On 10 May 2010, the Assembly agreed to extend the Committee Stage of the Bill to 17 December 2010.

### **Report on the Local Government (Finance) Bill**

11. At its meeting on 2 December 2010 the Committee agreed its report on the Bill and agreed that it should be printed.

## **Consideration of the Bill by the Committee**

12. The Bill consists of 48 Clauses and 2 Schedules. Clauses 1 and 2 are general Clauses, Clauses 3 – 5 are in relation to annual budget, Clauses 6 - 7 are in relation to reserves, Clauses 8 – 10 are in relation to funds, Clauses 11– 16 are in relation to borrowing, Clauses 17 – 18 are in relation to credit arrangements, Clause 19 is in relation to capital expenditure, Clauses 20 – 22 are in relation to capital, Clause 23 is in relation to investment, Clauses 24 – 25 are miscellaneous, Clause 26 – 30 are in relation to grants to councils, Clauses 31 – 36 are in relation to payments to councillors, Clauses 37 – 38 are in relation to payments for special purposes, Clause 39 is in relation to public appeals, Clause 40 is in relations to limit on expenditure, Clause 41 is in relation to subscriptions and Clauses 42 – 48 are supplementary Clauses.

### **Departmental briefing on the Bill, 3 December 2009**

13. Departmental officials briefed members on 3 December 2009. Officials provided the Committee with an overview of the synopsis of responses to the consultation on the Bill.

14. The officials stated that the Bill will introduce a prudential regime for capital finance that will enable councils to decide prudent and affordable levels of debt in line with guidance produced by the Chartered Institute of Public Finance and Accounting. The Bill will also enable the Department to implement the recommendation of the councillors remuneration working group that an independent remuneration committee should be set up to consider the system of allowances payable to councillors and also the level of allowances payable.

15. The officials informed members that the majority of respondents to the consultation on the Bill welcomed it and the Department's proposals to modernise the current legislation on finance and councillors' remuneration. In particular, councils and local government organisations welcomed the greater freedom for councils to manage their own financial affairs without having to obtain consent from the Department.

## **Departmental briefing on the Bill, 10 June 2010**

16. Departmental officials briefed members on 10 June 2010. Officials outlined the rationale of each Clause and answered members' queries.

17. The main areas of discussion were the separation of functions of the Chief Executive and Chief Financial Officer, the power to invest, mechanisms for internal and external audit control and guidance for councils,

## **Briefing by the Northern Ireland Local Government Association (NILGA) and the Association of Local Government Finance Officers (ALFGO), 16 September 2010**

18. Representatives from NILGA and ALFGO gave a joint briefing to the Committee on 16 September 2010. The representatives stated that they broadly welcomed the Bill and the proposals to modernise the current legislative framework relation to local government finance and councillors' remuneration. Both organisations however sought amendments to some of the Clauses.

19. NILGA and ALFGO both recommended that the Bill explicitly state that the roles of chief executive officer and chief financial officer be separate. While acknowledging that the Department has already made a commitment to specify the separation of roles in the forthcoming Local Government (Reorganisation) Bill, both organisations regarded it as imperative that the separation of roles is enforced as soon as possible in the interests of good governance.

20. Both organisations stated that they would like Clause 7 – Controlled Reserves – to be removed from the Bill as they hold the view that the designation of controlled reserves is contrary to the objective of giving local authorities freedom to manage their own financial affairs and also diverges from the view of the Chartered Institute of Public Finance and Accountancy, a body who issues guidance on best practice in public finance.

21. On other aspects of the Bill, NILGA and ALFGO would like to see the inclusion in the Bill of provision for the inclusion of social Clauses in council procurement contracts.

22. ALGFO also called for the rate support grant to be ring-fenced.

## **Briefing by the Derry City Council and the Transition Committee for the Derry and Strabane District Councils, 23 September 2010**

23. Representatives from Derry City Council and from the Transition Committee for the Derry and Strabane District Councils gave a joint briefing to the Committee on 23 September 2010. The representatives stated that they broadly welcomed the Bill and the proposals to modernise the current legislative framework.

24. The representatives supported the view of NILGA and ALFGO regarding the separation of the roles of chief executive officer and chief financial officer and also in seeking a provision for the inclusion of social Clauses in procurement contracts within the Bill.

25. The representatives from both groups expressed concerns about resourcing of grants, in particular the rates support grant and underlined the impact of cuts in the rates support grant, particularly to areas where there is high unemployment.

26. Derry City Council and the Transition Committee did not support Clause 7 - Controlled Reserves. They view that this Clause is contrary to the objective of giving local authorities freedom to manage their own financial affairs and that the new provisions within the Bill with regard to a chief financial officer having to report on the robustness of estimates, on affordable borrowing limits and on the adequacy of reserves, are sufficient safeguards. Both groups view the guidance from the Department in relation to keeping a District Fund balance of minimum 5% of operating expenditure as a sufficient control mechanism.

### **Briefing by the Chartered Institute of Public Finance and Accountancy (CIPFA), 23 September 2010**

27. A representative from the Chartered Institute of Public Finance and Accountancy gave a briefing to the Committee on 23 September 2010. The main issue of concern for CIPFA is Clause 1 relating to the designation of a chief financial officer within the council.

28. CIPFA strongly advocates that the chief financial officer should hold financial qualifications, be a member of a recognised accountancy body and should be a member of the senior management team within a council. CIPFA considers that these requirements are necessary in order that proper financial scrutiny is carried out and that a chief financial officer has the seniority and financial expertise to enable them to challenge the chief executive on financial matters if required. CIPFA holds that the requirement for financial qualifications would make it highly unlikely that a chief executive officer within a council would be able to also fulfil the role of chief financial officer.

29. CIPFA's view is that a provision for separation of roles could be included in this Bill or in the Local Government (Reorganisation) Bill; however they would have concerns if it was deferred to the latter Bill and this was subsequently delayed for a significant period.

### **Departmental briefing on the Bill, 14 October 2010**

30. Departmental officials briefed members at the meeting of 14 October 2010. Officials provided further details on Clauses 1 to 10 of the Bill.

### **Departmental briefing on the Bill, 21 October 2010**

31. Departmental officials briefed members at the meeting of 21 October 2010. Officials provided further details on Clauses 11 to 48, and Schedules 1 and 2 of the Bill. Officials also responded to queries with regard to public private partnerships and public finance initiatives, social clauses, land property disposals and valuations, emergency provisions, gender neutral drafting and benchmarking.

## **Key Issues**

32. During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department, the Examiner of Statutory Rules, Assembly Research and Library Service and external organisations.

### **Relating to several clauses**

Delegated powers of the Bill



## **Relating to Clause 1**

Role of the chief financial officer

## **Relating to Clause 4**

Concept of robustness in relation to estimates

## **Relating to Clause 5**

Robustness of the audit process

## **Relating to Clause 7**

Designation of reserves as controlled reserves

## **Relating to Clause 11**

The necessity for guidance with regard to the power of a council to borrow

## **Relating to Clause 12**

Requirement for the Chief Financial Officer to report on the affordable borrowing limit

## **Relating to Clause 14**

- Circumstances necessitating the imposition of borrowing limits
- Definition of 'national economic reasons'

## **Relating to Clause 17**

- Definition of a long term finance in the context of a credit arrangement
- Long term liabilities associated with closure and aftercare costs of landfill sites

## **Relating to Clause 22**

Use of capital receipts

## **Relating to Clause 23**

Guidance on investments

## **Relating to Clause 24**

Level of Assembly scrutiny in relation to the appointment of a receiver in respect of unpaid council borrowings.

## **Relating to Clause 27**

- Review of the statutory formula used for allocation of the rates support grant (formerly the 'resources grant')
- Ring fencing of the rates support grant to prevent in year cuts

### **Relating to Clause 30**

Payments due by councils to Departments

### **Relating to Clause 31**

Flexibility of payments for part time councillors

### **Relating to Clauses 32 and 39**

The use of gender neutral language

### **Relating to Clause 34**

Expenses incurred in attending conferences and meetings

### **Relating to Clause 35**

- Costs of establishing an independent remuneration panel
- Expenses to be supported by appropriate evidence

### **Relating to Clause 36**

Non-councillors receiving expenses

### **Relating to Clause 37**

Review of the current limits on expenditure for special purposes

### **Relating to Clause 39**

One-off payments for public appeals

### **Relating to Clause 41**

Subscriptions to certain local government associations and other bodies

### **General**

- Public Private Partnerships and Public Finance Initiatives
- Social clauses in public procurement contracts

### **Delegated powers of the Bill**

33. The Committee sought advice from the Examiner of Statutory Rules in relation to powers within the Bill to make subordinate legislation.

34. The Examiner advised that there were several powers to make regulations or orders in Part 1 (Financial Administration) of the Bill all of which were subject to negative resolution as follows:

- Clause 2(1) accounting practices
- Clause 6(1) maintenance of council reserves
- Clause 13 duty of a council to determine an affordable borrowing limit
- Clause 14(1) (with the consent of DFP) council borrowing limits for national economic reasons
- Clause 14(4) (with the consent of DFP) exercise of council's power under clause 14(3) to transfer headroom in relation to the borrowing limit to another council
- Clause 17(2)(b) and 3(c) credit arrangements
- Clause 18(3) control of credit arrangements
- Clause 19(2) what is and what is not capital expenditure
- Clause 20(3) capital receipts
- Clause 21 non-monetary receipts
- Clause 22 use of capital receipts
- Clause 24(9) altering the sum specified for the threshold for the High Court power to appoint a receiver
- Clause 25(2) guidance to councils

35. In his opinion these powers were subject to an appropriate level of Assembly scrutiny with the exception of the order-making power in Clause 24(9). Further details are provided under this clause.

36. The Examiner of Statutory Rules informed the Committee that Part 2 of the Bill (Grants to Councils) contained the following powers to make subordinate legislation:

- Clause 27(3) allowing the Department to make regulations for determining the amount of rate support grant payable to councils in any financial year.
- Clause 28(2) and (3) allowing the Department to make orders reducing the amount payable to a particular council.
- Clause 28(6) allowing the Department to defray any expenditure incurred in any financial year in the provision of services for a council by a body specified.

37. The Examiner of Statutory Rules advised the Committee that the first two were subject to draft affirmative procedure and the third to negative resolution. He suggested that these were appropriate levels of scrutiny and the Committee accepted this position.

38. According to the Examiner of Statutory Rules Part 3 of the Bill (Payments to Councillors) contained the following powers to make regulations subject to negative resolution:

- Clause 31 allowing the Department to make regulations for the payment by councils of prescribed allowances and other payments.

- Clause 35 allowing the Department to make regulations establishing a panel to advise the Department on payments by councils to councillors.

39. He indicated that he felt these were appropriate levels of scrutiny and the Committee accepted this position.

40. The Examiner of Statutory Rules advised the Committee that Part 4 of the Bill (Miscellaneous powers to make payments) contains one power in Clause 40(2) allowing the Department to make orders subject to draft affirmative procedure substituting a different amount for any amount specified in Clause 40(1). He indicated that this level of scrutiny seemed appropriate given that orders under this power allow for direct amendment of the Bill and the Committee accepted this position.

41. Finally the Examiner of Statutory Rules informed the Committee that Part 5 of the Bill (Supplementary) contains a power in Clause 47(2) allowing the Department to make commencement orders that are not subject to Assembly procedure. He indicated that this was in accordance with standard practice and the Committee accepted this position.

## **Role of the chief financial officer (Clause 1)**

42. Clause 1(2) requires a council to designate an officer of the council as its chief financial officer but does not require that these roles be held by a separate person. While it was noted that the Department intends to specify the separation of the roles of chief executive officer and chief financial officer when it brings forward a Local Government (Reorganisation) Bill, some organisations that made submissions to the Committee held that this separation should be specified in this Local Government (Finance) Bill in the interests of good governance. Currently, three of the 26 local councils have separate chief executive and chief financial officers.

43. The views of the councils and organisations which made submissions to the Committee were varied on the issue of the role of the chief financial officer within a council. Some councils and organisations stressed the importance of the separation of the roles of chief executive and chief financial officer and indeed this was the view of the Association of Local Government Finance Officers (ALGFO) and of the Northern Ireland Local Government Association (NILGA). The Chartered Institute of Public Finance and Accountancy (CIPFA) strongly advocated the separation of these roles in line with best practice in other regions of the United Kingdom to ensure that no officer has unfettered powers of decision within a council. CIPFA also recommended that a chief financial officer be required to hold an accountancy qualification, be a member of the senior management team at a council and be a member of a recognised professional accountancy body.

44. Under the Bill as drafted, it will be a matter for each council to decide whether the role of chief financial officer can be fully discharged if that officer has other significant responsibilities. However, the Department advised that it plans to refer councils to CIPFA's statement on the 'Role of the Chief Financial Officer in Local Government' which outlines the core responsibilities, the governance requirements and the personal skills and professional standards required from a chief financial officer. This statement recommends that a council's chief financial officer should hold membership of a recognised professional accountancy organisation and should be a key member of the council's leadership team.

45. The Committee recognised the merit in the separation of the two roles but expressed concern about cost implications, especially for smaller councils. In light of these concerns, the Committee commissioned research on the status quo in local councils and the current capacity for the appointment of a suitably qualified chief financial officer without recruitment if it were to

become a requirement. The Northern Ireland Local Government Association (NILGA) agreed to carry out research in order to gather further information on the current division of financial duties in local councils, to establish the qualifications held by those responsible for financial administration and to establish the existing capacity within the councils for potential re-designation of an officer to Chief Financial Officer.

46. The Research indicated that of the 17 councils that responded, 16 advised that they could re-designate an existing officer as a chief financial officer, 2 already operate a separate system, 3 have qualified accountants as their chief executives and 1 council indicated it would have to recruit externally for a chief financial officer (Appendix 5).

47. The Committee also received correspondence from the Society of Local Authority Chief Executives (SOLACE) stating that whilst they have no strong opinion on the separation of chief executive and chief financial officer roles, they believe it is important not to undermine the chief executive's role as chief accounting officer.

48. The Committee agreed that the proposals in the Bill requiring councils to designate a chief financial officer, along with guidance recommending that the designated officer hold membership of a recognised professional accountancy organisation, were appropriate at this stage under the current council model.

### **Concept of robustness in relation to estimates (Clause 4)**

49. Some organisations requested clarification from the Department on the concept of robustness pertaining to an estimate and sought guidance from the Department on which issues are to be considered by the Chief Financial Officer in order to determine whether estimated figures are robust

50. The Department viewed that robustness should derive in part from role separation, which ensures there is a chief financial officer dedicated to, and responsible for, the preparation of the estimates, and who can follow through on guidance issued by the Department, accounting standards and the Prudential Code for Capital Finance in Local Authorities (the 'Prudential Code') issued by CIPFA.

51. The Committee was content with this response.

### **Robustness of the audit process (Clause 5)**

52. The Committee questioned the robustness of the audit process while considering Clause 5. Some members felt that in order to ensure that action could be taken to prevent the mismanagement of council funds, the audit process needed to be strengthened.

53. The Department assured the Committee that guidance is provided to councils on good management practices, including the establishment of scrutiny and audit committees. In addition members recognised that there is an onus on councillors to ensure good financial management.

54. The Committee accepted that it would be inappropriate to legislate within this bill on the audit process itself but agreed to make a recommendation that in conjunction with the implementation of this Bill, the audit process should be reviewed and if necessary, strengthened.

### **Designation of reserves as controlled reserves (Clause 7)**

55. The majority of submissions were not in favour of the designation of any reserves as controlled reserves as, they argued, this would be incompatible with the objective of giving local authorities freedom to manage their own financial affairs. Submissions regarded the existing departmental guidance that councils should hold, as a minimum, a District Fund balance equating to between 5 and 7.5% of the net operating expenditure for the year as a sufficient control mechanism.

56. Organisations advocated that management of reserves should be governed by guidance rather than legislation. They felt that there may be a legitimate reason why a council may have a depleted reserve and that the new guidelines contained within the Bill in relation to robustness of estimates, borrowing limits and adequacy of reserves are sufficient safeguards of council funds.

57. The Committee noted that in England and Wales, the Secretary of State has similar powers under section 26(2) of the Local Government Act 2003 whereby the Secretary of State has a reserve power to impose regulations on a local authority but that this would only be done in extreme circumstances and as yet the regulations have not been needed, and therefore have never been made. Also, that in 2010 the Chief Local Government Auditor reported that 22 councils met or exceeded the 5-7.5% balance on the District Fund and that four councils held a balance of between 2.2 and 4.8%.

58. The Committee asked the Chief Local Government Auditor for an opinion on the inclusion of Clause 7 and his response (Appendix 6) indicated that it:

"...seems reasonable for the Department to take the powers proposed by Clause 7..."

59. However the Chief Local Government Auditor also suggested that it might be prudent to:

"...wait until say the outcome of the council's financial year to 31 March 2011 before taking a view as to whether regulations under Clause 6 [requirement to maintain reserves] would be appropriate. ...if this non-statutory guidance [on maintaining the 5-7.5% balance on the District Fund] proves effective, regulation may not be required."

60. The Department offered assurances that there are no plans to impose any control on reserves and that it will be a matter for each individual council to determine its level of reserves. The Department indicated it only intends to use this power if it becomes aware that a council is deemed to be acting improperly with respect to its financial responsibilities (possibly having been alerted by Local Government Audit) or potentially when the Review of Public Administration necessitates. The creation of such a regulation would be subject to consultation.

61. The Committee expressed concerns that should it be necessary for the Department to impose controls on individual council reserves if the council was deemed to have acted improperly, that such actions could only be taken retrospectively and therefore would fail to safeguard council funds from being used improperly in the first instance. The Department advised that the various requirements on a council for proper management of financial affairs, such as the designation of a chief financial officer, reporting on borrowing limits, reporting on the robustness of estimate, maintenance of reserves and the in year review of the council's financial position should prevent such a situation from arising.

62. The Committee accepted the Department's indication that it does not plan to impose any controls on reserves and that this clause will only be used if the Department becomes aware of a council acting improperly.

## **The necessity for guidance with regard to the power of a council to borrow (Clause 11)**

63. The Committee expressed the view that there is insufficient guidance from the Department for councils on borrowing.

64. In response, the Department advised that subordinate legislation – the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011 – will be drafted. These will impose a duty on councils to have regard to CIPFA's Prudential Code for Capital Finance in Local Authorities, the 'Prudential Code', which sets out clear governance procedures for the production of capital investment plans which are affordable, prudent and sustainable.

65. The Committee welcomed the development of this subordinate legislation which will provide guidance to councils. The Committee will scrutinise this legislation and review the consultation responses in due course.

## **Requirement for the Chief Financial Officer to report on the affordable borrowing limit (Clause 12)**

66. The Committee heard from some of the respondents that there should be an explicit requirement for the chief financial officer to report to the council on the review of the affordable borrowing limit.

67. The Department confirmed that the CIPFA 'Prudential Code' does require the chief financial officer to review the council's borrowing limit and to report to the whole council.

68. The Committee was content with the Department's response.

## **Circumstances necessitating the imposition of borrowing limits and a definition of 'national economic reasons' (Clause 14)**

69. There were two key issues raised in relation to this Clause – the circumstances necessitating the imposition of borrowing limits and the definition of 'national economic reasons'.

70. Some respondents to the Committee expressed the view that the provision within this Clause to impose a limit on council borrowing should be restricted to circumstances where a local authority has clearly disregarded its duty under Clause 13 which obliges councils to determine and keep under review the amount they can afford to borrow. The Department provided assurances that this power of direction would only be used if the Department became aware that a council was deemed to be acting improperly with respect to its borrowing responsibilities.

71. In relation to a definition of 'national economic reasons', some respondents wished to see a clear definition of such circumstances in the legislation and a requirement for consultation. The Department considered that it is not practicable to provide a definition but highlighted that it is intended that such circumstances would arise only in an unusual and serious situation and that the powers in this Clause are intended as powers of last resort and would require the consent of the Department of Finance and Personnel.

72. With regards consultation the Department responded that it does not intend to introduce a requirement to consult on regulations under this clause because this provision is designed to be used in the event of a national economic or financial crisis when it is likely that action would

need to be taken quickly. It stresses that the power is to be used as a last resort and that any regulations made under the clause would be referred to the Environment Committee for scrutiny.

73. The Committee was content with the Department's explanation on these issues.

### **Definition of a long term finance in the context of a credit arrangement and long term liabilities associated with closure and aftercare costs of landfill sites (Clause 17)**

74. There were two key issues raised in relation to this Clause; the definition of long term finance and the long term liabilities associated with landfill sites.

75. Regarding a definition of long term finance, some respondents to the Committee recommended that trade creditors be excluded from the definition of a credit arrangement as they are regarded as part of the working capital requirement rather than as long term debt. The Department advised that the draft subordinate legislation, the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011, would provide further details on credit arrangements and confirmed that trade creditors would be excluded presuming that those creditors were paid within a 12-month calendar period.

76. In relation to liabilities associated with landfill sites, some respondents sought clarification on whether the long term liabilities associated with the closure and aftercare costs associated with landfill sites would be treated as credit arrangements for inclusion when determining the affordable borrowing limit. The Department advised that this Bill does not make special provision for costs associated with landfill sites and that provision for such costs must be made within the council budget and the Committee accepted this response.

### **Use of capital receipts (Clause 22)**

77. Several respondents stated that there should be no requirement for capital receipts to be applied in the first instance against any money borrowed by the council for the purposes of acquiring that asset. This view was shared by the Committee.

78. The Department advised that draft subordinate legislation, the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011, would provide details on the use of capital receipts and addressed the concerns expressed by providing flexibility in how receipts should be used.

79. The Committee welcomed the development of this subordinate legislation which would provide guidance to councils. The Committee will scrutinise this legislation and review the consultation responses in due course.

### **Guidance on investments (Clause 23)**

80. Some respondents sought clarification on any potential restrictions on the types of assets to be invested in and others commented on the lack of Departmental guidance.

81. The Department advised that guidance on investments has been drafted and will be issued under Clause 25. The Department also highlighted that investment guidance is also provided in the CIPFA 'Prudential Code'.

82. The Committee welcomed the development of this guidance.



## **Level of Assembly scrutiny in relation to the appointment of a receiver in respect of unpaid council borrowings (Clause 24)**

83. As referred to under 'Delegated Powers', The Committee sought advice from the Examiner of Statutory Rules in relation to powers within the Bill to make subordinate legislation.

84. The Examiner of Statutory Rules informed the Committee that the order-making power in Clause 24(9) would allow the Department to make orders subject to negative resolution altering the sum specified in Clause 24(8) (currently £10,000); the threshold for the High Court's power to appoint a receiver under Clause 24(5) on the application of a lender to a council.

85. Having considered the level of Assembly scrutiny proposed by the Department, the Examiner of Statutory Rules advised that as an order under this provision would bring about a direct amendment of what is on the face of the Bill in respect of a jurisdiction of the High Court, the Committee may wish to urge the Department to make the power subject to a higher level of Assembly scrutiny.

86. The Committee agreed to recommend an amendment to Clause 24(9) so that the power to make an order under this provision would be subject to draft affirmative procedure. The Department indicated that it would be content to introduce an amendment to this effect and on 25 November the Committee agreed Clause 24 subject to the Departmental amendment as follows:

Clause 24, Page 8 Line 27

Leave out 'made subject to negative resolution'.

Clause 24, Page 8 Line 29

At end insert –

'(10) An order shall not be made under subsection (9) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.'

## **Review of the statutory formula used for allocation of the rates support grant (formerly the 'resources grant') and ring fencing of the rates support grant to prevent in-year cuts (Clause 27)**

87. There were two key issues raised in relation to Clause 27 – the review of the statutory formula used for allocation of the resources grant and the ring-fencing of the rates support grant.

88. Regarding the statutory formula used for allocation of the rates support grant (formerly the 'resources' grant), some respondents contended that although content with the formula in the current 26 council model, it will need to be immediately reviewed following the reorganisation of local authorities under the review of public administration (RPA) in order to ensure that it continues to meet its objectives.

89. The Department advised that as the timetable for local government reform has not yet been confirmed, the existing arrangements must continue. The Department commissions Central Statistics and Research Branch to carry out an equality monitoring exercise on the resources

element of the General Grant every year. Exercises to date have shown that there is no negative impact upon any specific Section 75 group.

90. The Committee requested further information on the formula used for setting the rates support grant, the process used for changing the formula and whether or not the formula was rural proofed as well as subject to an equality impact assessment. The Department replied that the Bill provides for the separation of the current general grant into two elements; the rates support grant and the de-rating grant. This is a name change and the formulae for calculating the two new grants have not been changed. The formula for setting the rates support grant is designed to measure each council's wealth base against its need and will only be paid to those councils whose needs exceed their wealth.

91. When the current general grant calculation was introduced in 2003 the Department carried out a full Equality Impact Assessment and there was no negative impact on any of the Section 75 groups. The Department also indicated that although rural proofing processes were still being developed in 2003, the formula contains a criterion on sparsity of population which ensures in part that rural areas are not disproportionately affected.

92. In relation to ring-fencing of the rates support grant, many of the respondents expressed concerns with regard to the resourcing of grants in the future. Respondents highlighted that the rate support grant provides additional resources to those councils in greatest need as their wealth falls below the Northern Ireland average. Cuts to this grant will mean that these councils will become poorer and will likely be forced to increase their rates, putting their ratepayers at a distinct disadvantage compared to other areas of Northern Ireland. Concerns were also expressed at the in-year cuts to the rates support grant which took place in July 2010. This presented significant resource issues, especially for those council areas whose wealth falls below the Northern Ireland average, as well as budgeting and planning issues, when the expected grant was not received. Some respondents held that such cuts should be subject to a full equality impact assessment and rural proofing.

93. The Department stated that the in-year cuts were 'unique and exceptional' but the Department's very exceptional difficulties left no viable alternative.

94. While accepting that budgetary pressures cannot be predicted and that future cuts to grants cannot be definitively ruled out, the Committee considered that in-year cuts to grants present significant and unacceptable difficulties for local councils. The Committee agreed therefore to recommend an amendment to Clause 27 which would prevent in-year cuts to the rate support grant as follows:

Clause 27, Page 9, Line 26

At end insert –

'and shall not be reduced during the financial year in question'

### **Payments due by councils to Departments (Clause 30)**

95. The Department advised the Committee that this clause provides for the deductions from grants where a council owes money under a statutory provision to a Northern Ireland department or public body, to the Consolidated Fund or to a public fund under the control of a Northern Ireland department or public body.

96. The Committee suggested that there should be an early warning system for payments due by councils and the Department agreed to undertake to provide notification to any council affected by the invoking of this clause as early in the process as possible. However, the Department anticipated that in a circumstance where this clause was being relied upon, there would have already been significant ongoing communication between the departments and councils involved.

97. The Committee was content with the Department's response.

### **Flexibility of payments for part time councillors (Clause 31)**

98. The Committee held the view that payments should be flexible to accommodate those who wished to make a career out of local government and for those who wished to take on the position on a part-time basis while still retaining their full time jobs.

99. The Department confirmed that there is no expectation that the role of councillor might be a full time position and highlighted that Clause 31 provides the council with flexibility to determine the amount or rate of allowances payable to its councillors, subject to a maximum level to be set by the Department.

100. The Committee was content with this response.

### **The use of gender-neutral language (Clauses 32 and 39)**

101. The Committee noted that Clauses 32 and 39 of the Bill refer to the 'chairman' and 'vice chairman' of the council. The Department advised that the reasons for using these gender-specific terms was to connect these Clauses with sections 11 and 13 of the Local Government Act (Northern Ireland) 1972. However the Department indicated that it would be willing to introduce amendments to introduce gender-neutral language should the Committee recommend it.

102. In keeping with the Assembly's commitment to the use of gender-neutral language in the drafting of legislation, the Committee agreed to recommend amendments to Clauses 32 and 39 to replace the terms used with the gender neutral terms 'chairperson' and 'vice-chairperson' as follows:

Clause 32, Page 12, Line 9

Leave out 'chairman' and insert 'chairperson'.

Clause 32, Page 12, Line 10

Leave out 'vice-chairman' and insert 'vice-chairperson'.

Clause 32, Page 12, Line 12

Leave out 'chairman or vice-chairman' and insert 'chairperson or vice chairperson'.

Clause 39, Page 14, Line 28

Leave out 'chairman' and insert 'chairperson'.

Clause 39, Page 14, Line 29

Leave out 'chairman' and insert 'chairperson'.

### **Expenses incurred in attending conferences and meetings (Clause 34)**

103. The Committee asked for more information on the need for this clause and was advised by the Department that it had been requested by the National Association of Councillors.

104. In response to the Committee's question the National Association of Councillors explained that councillors feel that they are representative of their councils when they carry out this duty as they would be nominated by their local authority in the first instance and therefore wished to have it included in the new Finance Bill.

105. The Committee was content with this response.

### **Cost of establishing an independent panel to advise on payments to councillors and expenses to be supported by appropriate evidence (Clause 35)**

106. Concerns were expressed by the Committee and by some respondents with regard to the costs associated with the establishment and running of the proposed independent panel to advise on councillors' remuneration. The Department advised that such a panel has been proposed in response to previous criticisms in respect of the lack of independent advice provided to the Minister for the Environment about councillors' remuneration and allowances and has been drawn up in line with practice in other regions of the UK. The Department advised that while the costs have been estimated at £20,000 to £25,000, this cost will not be incurred every year as the Panel will only meet when the Minister directs it to do so and the costs will be borne by the Department.

107. The Committee, while welcoming the independent nature of the panel, expressed grave concerns about the level of costs and remuneration to the panel members.

108. Some respondents also advocated that all expenses should be supported by appropriate evidence of expenditure in accordance with HM Revenue and Customs requirements. The Department advised that draft subordinate legislation, the Local Government (Payments to Councillors) Regulations (Northern Ireland) 2011, would impose a requirement to provide receipts proving actual expense, subject to any requirement or limitation that a council may determine.

109. The Committee requested more information on estimated details of costs, the baseline on which costs were based and how the panel might be expected to operate. The Department advised that there are two models used in other regions of the UK.

110. In England, where there are over 400 local authorities of varying size, responsibility and governance, local authorities can establish and maintain an independent remuneration panel or join with other local authorities to have a joint panel. In Scotland where there are 32 local authorities and in Wales where there are 23, all with similar powers, national committees were favoured.

111. In Northern Ireland the Councillor's Remuneration Working Group concluded that a single panel would be the most suitable because it would secure a common framework of allowances and equitable treatment for councillors in Northern Ireland. Estimates of costs were based on the experience in Scotland and Wales.

112. The Department also noted that it would not be feasible to use the recommendations of either the Welsh or Scottish panels instead of having a local panel, because the functions of councils is much wider in these countries and there are significant differences in their systems for special responsibility allowances, travel and subsistence arrangements.

113. The Committee was content with the information and explanation from the Department.

### **Non-councillors receiving expenses (Clause 36)**

114. Clause 36 indicates that in relation to receiving expenses incurred, the definition of 'councillor' includes members of committees or sub-committees whether they are members of the council or not. The Committee asked for clarification of this provision.

115. The Department explained that this allowed councils to make payments towards expenses incurred by non-councillors in respect of attendance approved by the council at conferences and meetings which, in the opinion of the council, relate to the interests of the district or its inhabitants. It is often used in town-twinning projects.

116. The Department also noted that this provision repeals and replaces similar legislation in the Local Government Act and therefore does not represent a change of policy.

117. The Committee was content with this explanation.

### **Review of the current limits on expenditure for special purposes (Clause 37)**

118. The majority of councils and organisations who made submissions noted that the Department intends to include the general power of wellbeing in the forthcoming Local Government (Reorganisation) Bill but considered that, in the interim, there is a need to review the current limits on expenditure for special purposes as they consider them to be too low.

119. The Department responded by advising that initially, it had been planned to introduce the Local Government (Reorganisation) Bill (which would include a power of wellbeing) six weeks after this Local Government (Finance) Bill. However, given that the timetable for the review of public administration has not yet been set, the Department agreed that they would review whether the limits need to be uplifted in the meantime. This would be done through subordinate legislation which would be subject to public consultation.

120. The Committee welcomed the Department response and requested early sight of the draft legislation.

### **One-off payments for public appeals (Clause 39)**

121. Some respondents recommended that this Clause be amended to replace the words 'particular event' with the word 'circumstances'. The Department advised that the purpose of the provision in this Clause is to allow councils to make one-off payments associated with particular

events, rather than an underlying power for councils to make regular payments to causes in general.

122. The Committee was content with the Department's response and agreed that to amend this Clause as above would alter the intention of the Clause.

### **Subscriptions to certain local government associations and other bodies (Clause 41)**

123. The Committee expressed concerns that public funds would be used to pay for an officer of the council to be a member of a professional body associated with their job, where membership of that body was a requirement to hold the post. Members held the view that if an applicant for a position as an officer of the council was required to hold membership of a professional body or association in order to be considered for the post, then it should be considered that it is up to that individual to pay for the subscription throughout their career. The Committee commissioned research on whether currently any councils already pay for their officers to hold subscriptions, to which bodies or associations these subscriptions are paid and to establish what the usual practice is in the private sector where an employee must hold membership of a professional body as a requirement of their post.

124. In light of the research information, the Committee agreed to accept the clause as drafted.

### **Public Private Partnerships and Public Finance Initiatives**

125. Several organisations commented on the lack of powers within the draft Bill to allow councils to engage new initiatives and models for service delivery in the future, such as Public Private Partnerships (PPP), Public Finance Initiatives (PFI) or Local Asset Backed Vehicles (LABV). Submitting organisations viewed that such initiatives may be required in order for councils to put in place arrangements for service delivery models and to effectively manage their assets.

126. In response to these comments, the Department advised that Section 1 of the Local Government (Miscellaneous Provisions ) Act (Northern Ireland) 2010 allows councils to enter into contracts with another person for the provision of assets or services, or both, for the purposes of, or in connection with, the discharge by councils of their statutory functions. This would include PPP/PFI type contracts.

127. In relation to Local Asset Backed Vehicles (LABV), the Department advised that Clause 24 of the Bill specifically prevents councils from entering into such arrangements. The Bill makes it unlawful for a council to use property as security for borrowing and provides that all of a council's revenues serve as security for borrowing. The Department regard this as a necessary precaution to protect council property and to ensure that councils make provision to service their debts when considering the estimates of income and expenditure.

128. The Committee was content with this response.

### **Social clauses in public procurement contracts**

129. The Committee received evidence which recommended that provision be made in the Bill for the inclusion of social clauses in public procurements. This should include for example consolidation of the Department of Finance and Personnel "Guidance on Equality of Opportunity and Sustainable Development in Public Sector Procurement".

130. The Department, in response, advised that the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 imposes restrictions on councils which prevent them from including social clauses in contracts. Under the Local Government (Best Value) Act (Northern Ireland) 2002, the Department has drafted subordinate legislation to lift that restriction. The draft legislation and attendant guidance is currently being considered by the Department of Finance and Personnel to ensure that it does not interfere with general or European procurement legislation and the Minister for the Environment hopes to be in a position to consult on this draft legislation in early 2011. The Local Government Best Value (Exclusion of Non-Commercial Considerations) (Northern Ireland) Order 2011 will go to public consultation as is usual practice.

131. The Committee welcomed the development of this subordinate legislation, requested early sight of the draft legislation and recommended it be progressed rapidly.

## **Clause by Clause Consideration of the Bill**

132. The Committee conducted its Clause by Clause scrutiny of the Bill on 25 November 2010—see Appendix 2. The Committee considered one amendment of its own and several proposed by the Department in response to Committee recommendations and its own needs which are outlined below.

### **Clause 1 – Duty to make arrangements**

133. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 2 – Accounting practices**

134. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 3 – Annual budget**

135. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 4 – Report by chief financial officer on estimates**

136. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 5 – In-year review**

137. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted. In addition the Committee agreed to recommend that the Department conduct a review of the robustness of the local government audit process and strengthen in it if necessary.

### **Clause 6 – Reserves – general**

138. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 7 – Controlled reserves**

139. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 8 – The general fund**

140. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 9 – Power to establish other funds**

141. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 10 – Limitation on application of funds**

142. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 11 – Power to borrow**

143. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 12 – Control of borrowing**

144. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 13 – Duty to determine affordable borrowing limit**

145. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 14 – Imposition of borrowing limits**

146. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 15 – Temporary borrowing**

147. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 16 – Protection of lenders**

148. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.



## **Clause 17 – Credit arrangements**

149. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 18 – Control of credit arrangements**

150. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 19 – Capital expenditure**

151. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 20 – Capital receipt**

152. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 21 – Non-money receipts**

153. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 22 – Use of capital receipts**

154. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 23 – Power to invest**

155. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 24 – Security for money borrowed, etc.**

156. At the meeting of 25 November 2010 the Committee was content with the Clause subject to the amendment proposed by the Department to make orders under sub-section 9 subject to draft affirmative procedure as follows:

Clause 24, Page 8 Line 27

Leave out 'made subject to negative resolution'.

Clause 24, Page 8 Line 29

At end insert –

'(10) An order shall not be made under subsection (9) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.'

## **Clause 25 – Guidance**

157. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 26 – De-rating grant**

158. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 27 – Rates support grant**

159. At the meeting of 25 November 2010 the Committee was content with the Departmental amendment to require the necessary information for calculating the rates support grant from councils by determination rather than statutory pro forma as follows:

Clause 27, Page 9, Line 33

Leave out lines 33 to 35.

Clause 27, Page 10, Line 5

At end insert –

'(9A) A council shall give the Department such information for the purpose of the calculation mentioned in subsection (5), at such time and in such form as the Department may determine.'

160. The Committee was also content with the consequential amendment to this clause proposed by the Department arising from its amendment to Clause 43 to allow any regulations to be made under the Bill to include such incidental, supplementary, consequential, transitory or saving provisions as may be required necessary as follows:

Clause 27, Page 9, Line 40

Leave out lines 40 and 41.

161. Members were also content with the Committee amendment to prevent in-year cuts to the rates support grant as follows:

Clause 27, Page 9, Line 26

At end insert –

'and shall not be reduced during the financial year in question'

## **Clause 28 – Reductions in grants under sections 26 and 27**

162. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 29 – Other grants to councils**

163. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 30 – Payments due by councils to departments, etc.**

164. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 31 – Allowances, etc. for councillors**

165. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 32 – Allowances for chairman and vice-chairman**

166. At the meeting of 25 November 2010 the Committee was content with the Clause subject to the amendment proposed by the Department to introduce gender-neutral language as follows:

Clause 32, Page 12, Line 9

Leave out 'chairman' and insert 'chairperson'.

Clause 32, Page 12, Line 10

Leave out 'vice-chairman' and insert 'vice-chairperson'.

Clause 32, Page 12, Line 12

Leave out 'chairman or vice-chairman' and insert 'chairperson or vice chairperson'.

### **Clause 33 – Expenses of official and courtesy visits, etc.**

167. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 34 – Expenses incurred in attending conferences and meetings**

168. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 35 – Panel to advise on payments to councillors**

169. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 36 – Interpretation**

170. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 37 – Payments for special purposes**

171. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 38 – Restrictions on power to make payments under section 37**

172. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 39 – Public appeals**

173. At the meeting of 25 November 2010 the Committee was content with the Clause subject to the amendment proposed by the Department to introduce gender-neutral language as follows:

Clause 39, Page 14, Line 28

Leave out 'chairman' and insert 'chairperson'.

Clause 39, Page 14, Line 29

Leave out 'chairman' and insert 'chairperson'.

### **Clause 40 – Limit on expenditure under sections 37 and 39**

174. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 41 – Subscriptions to certain local government associations and other bodies**

175. At the meeting of 25 November 2010 the Committee was content with the Clause as amended.

### **Clause 42 – General interpretation**

176. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

### **Clause 43 – Regulations**

177. At the meeting of 25 November 2010 the Committee was content to accept the proposed Departmental to this clause to allow regulations or orders to be made under the Bill to include such incidental, supplementary, consequential, transitory or savings provisions as may be considered expedient or necessary as follows:

Clause 43, Page 16, Line 20

At end insert –

'(2) Regulations and orders under this Act may contain such incidental, supplementary, consequential, transitory and saving provisions as the Department thinks necessary or expedient.'

The Committee also accepted the consequential amendment to Clause 27 as a consequence of its amendment to this clause (See Clause 27).

## **Clause 44 – Consultation on regulations, orders and guidance**

178. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 45 – Minor and consequential amendments**

179. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 46 – Repeals**

180. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 47 – Commencement**

181. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Clause 48 – Short title**

182. At the meeting of 25 November 2010 the Committee was content with the Clause as drafted.

## **Schedule 1 – Minor and consequential amendments and Schedule 2 – Repeals**

183. At the meeting of 25 November 2010 the Committee was content with Schedule 1 subject to the amendment proposed by the Department to include an additional statutory instrument as follows:

Schedule 1, Page 18, Line 18

At end insert –

'The Deregulation and Contracting Out (Northern Ireland) Order 1996 (NI 11)

5A. In Schedule 4 (restrictions on disclosure of information), in the definition of "chief financial officer" in paragraph 7(3), for '148(1) of the Local Government Act (Northern Ireland) 1972' substitute '42 of the Local Government Finance Act (Northern Ireland) 2010'.

## **Long title**

184. At the meeting of 25 November 2010 the Committee agreed the Long Title of the Bill.

## **Appendix 1**

### **Minutes of Proceedings**

**Thursday 18 September 2008,  
Room 144, Parliament Buildings**

Present: Mr Patsy McGlone (Chairperson)

Mr Billy Armstrong

Mr Cathal Boylan

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr Samuel Gardiner

Mr Alastair Ross

Mr Peter Weir

In Attendance: Mr John Torney (Principal Clerk)

Dr Alex McGarel (Assembly Clerk)

Mr William Long (Assistant Clerk)

Mr Sean McCann (Clerical Supervisor)

Mr Iain Elliott (Clerical Officer)

Apologies: Mr Ian McCrea

Mr Daithi McKay

#### **5. Departmental briefing on Local Government (Finance) Bill**

Mr Weir declared an interest as a member of the Policy Development Panel on Governance.

Departmental officials briefed the Committee and answered members' questions on the draft Local Government (Finance) Bill.

11.29a.m Mr Armstrong rejoined the meeting.

The main areas of discussion were severance arrangements, a transition committee, co-options and capital finance.

#### **Patsy McGlone**

Chairperson, Committee for the Environment

25 September 2008

[EXTRACT]

**Thursday 23 April 2009,  
Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr Trevor Clarke  
Mr David Ford  
Mr Tommy Gallagher  
Mr Ian McCrea  
Mr Patsy McGlone (Chairperson)  
Mr Daithi McKay  
Mr Alastair Ross  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr William Long (Assistant Clerk)  
Mr Sean McCann (Clerical Supervisor)  
Mr Steven Mealey (Clerical Officer)

Apologies: Mr David McClarty

#### **4. Departmental briefing on the Local Government (Contracts and Compulsory Purchase) and Finance Bills**

The following members declared an interest as councillors:

Patsy McGlone – Cookstown District Council

Peter Weir – North Down Borough Council, NILGA member, Panel A member

David Ford – Antrim Borough Council

Ian McCrea – Cookstown District Council

Roy Beggs – Carrickfergus Borough Council

Trevor Clarke – Antrim Borough Council

Daithi McKay – Ballymoney Borough Council

Departmental officials briefed the Committee and answered members' questions on the Local Government (Contracts and Compulsory Purchase) and Finance Bills.

The main areas of discussion were compulsory purchase powers and vesting, the development of public/private partnerships and the Committee stage of the Bills.

Agreed: That the DOE forwards the Committee a timetable for the introduction of these Bills.

11.10a.m Mr Weir left the meeting.

11.10a.m Mr Boylan left the meeting.

**Patsy McGlone**

Chairperson, Committee for the Environment  
30 April 2009

[EXTRACT]

## **Thursday 03 December 2009, Senate Chamber, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Adrian McQuillan  
Mr Alastair Ross

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Ian McCrea  
Mr Daithi McKay  
Mr Peter Weir

### **5. Departmental Briefing on the Local Government Finance Bill – synopsis of responses**

The following members declared an interest:

Dolores Kelly – Member of Craigavon Borough Council and member of Craigavon Voluntary Transition Committee

Roy Beggs – Member of Carrickfergus Borough Council

Danny Kinahan – Antrim Borough Council

David Ford – Antrim Borough Council

John Dallat – Coleraine Borough Council

Adrian McQuillan – Coleraine Borough Council

Departmental officials briefed the Committee and answered members' questions on the Local Government Finance Bill synopsis of responses.

The main areas of discussion were independent assessors, control of reserves, limits of approval and borrowing.



Agreed: That a letter is sent to the Department asking for a quarterly report on infractions in relation to European legislation, information on control of reserves and on any guidance that will be issued in relation to clause 7.

## **Dolores Kelly**

Chairperson, Committee for the Environment  
7 January 2010

[EXTRACT]

## **Thursday 11 March 2010, Room 144, Parliament Buildings**

Present: Mr Jonathan Bell  
Mr Roy Beggs  
Mr Cathal Boylan (Deputy Chairperson)  
Mr John Dallat  
Mr David Ford  
Mrs Dolores Kelly (Chairperson)  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Daithi McKay  
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross

10.12a.m. The meeting went into public session.

### **9. Consultations**

Local Government Finance Bill – synopsis of responses

Agreed: That the Committee is content for the Department to proceed with the policy.

### **10. Date, time and place of next meeting**

The next meeting will be held on Thursday 11 March 2010 at 10.00a.m in Room 144, Parliament Buildings.

12.33p.m. The Chairperson adjourned the meeting.

## **Dolores Kelly**

Chairperson, Committee for the Environment  
4 March 2010

[EXTRACT]

## **Thursday 10 June 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Chairperson)  
Mr John Dallat  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Jonathan Bell

### **7. Departmental briefing on the Local Government Finance Bill**

The following members declared an interest:

Mr Beggs – Carrickfergus Borough Council

Mr McCrea - Cookstown District Council

Mr McGlone – Cookstown District Council

Mr Weir – North Down Borough Council

Departmental officials briefed the Committee and answered members' questions on the Local Government Finance Bill.

The main areas of discussion were the role of the Chief Financial Officer, external audit procedures, whether guidance will be mandatory and the timeframe for the Bill.

12.07p.m Mr Wilson rejoined the meeting.

12.11p.m Mr McGlone rejoined the meeting.

12.19p.m Mr Kinahan rejoined the meeting.

Agreed: That a letter is sent to the Department asking for further information on the mechanisms that will be put in place for external audit and advice and what opportunities there may be in this bill to do this. Members would also like to know to what extent the guidance will be mandatory.

## **Cathal Boylan**

Chairperson, Committee for the Environment  
17 June 2010

[EXTRACT]

### **Thursday 09 September 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Jonathan Bell  
Mr Cathal Boylan (Chairperson)  
Mr John Dallat  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies:

10.01a.m. The meeting began in public session at.

#### **10. Local Government Finance Bill**

Members noted a Departmental reply to Committee queries on the Local Government Finance Bill.

The Chairperson informed members that oral evidence sessions are being arranged with the Association of Local Government Finance Officers along with NILGA, Ards Borough Council, Derry City Council/Strabane Transition Committee and Lisburn City council.

The Chairperson informed members they had also been provided with a copy of comments from the Chartered Institute of Public Finance and Accountancy (CIPFA) on the Bill.

Agreed: That CIPFA is invited to brief the Committee at a future meeting.

#### **15. Date, time and place of next meeting**

The next meeting will be held on Thursday 16 September 2010 at 10.00a.m in Room 144, Parliament Buildings.

12.57p.m. The Chairperson adjourned the meeting.

## **Cathal Boylan**

Chairperson, Committee for the Environment  
23 September 2010

[EXTRACT]

### **Thursday 16 September 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr John Dallat

10.03 a.m The meeting began in public session.

#### **1. Apologies**

Apologies are listed above.

#### **5. ALGFO/NILGA briefing on Local Government Finance Bill**

Representatives from ALGFO and NILGA briefed the Committee and answered members' questions on the Local Government (Finance) Bill.

10.29a.m Mr Clarke joined the meeting

The main areas of discussion were the separation of roles between the Chief Financial Officer and Chief Executive Officer, the possibility of ring fencing the rate support grant, controlled reserves and the possibility of introducing social clauses to the Bill.

Agreed: That Assembly Research is asked to provide information in relation to the arrangements that are currently in place in each local authority regarding the role of Chief Financial Officer.

Agreed: That ALGFO provides the Committee with any further information it wishes to add in relation to the Bill.

## **Cathal Boylan**

Chairperson, Committee for the Environment  
23 September 2010

[EXTRACT]

### **Thursday 23 September 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross

10.10 a.m The meeting began in public session.

#### **5. Derry City Council and the Transition Committee for Strabane and Derry District Councils briefing on Local Government Finance Bill**

Mr Beggs declared an interest as a member of Carrickfergus Borough Council

Representatives from Derry City Council and the Transition Committee for Strabane and Derry District Councils briefed the Committee and answered members' questions on the Local Government (Finance) Bill.

The main areas of discussion were the role of the Chief Finance Officer, Controlled Reserves and the ring fencing of the Rate Support Grant.

11.10a.m Mr Weir rejoined the meeting.

Agreed: That a letter is sent to the Local Government Auditor asking for his view on controlled reserves.

#### **6. CIPFA briefing on Local Government Finance Bill**

Mr Willie Clarke declared an interest as a member of Down District Council.

A representative from CIPFA briefed the Committee and answered members' questions on the Local Government (Finance) Bill.

The main areas of discussion were the role of the Chief Finance Officer and Controlled Reserves.

11.30a.m Mr Buchanan left the meeting.

11.49a.m Mr Wilson left the meeting.

Agreed: That Assembly Research is asked to provide a paper on the capacity within councils to redesignate existing staff as the Chief Financial Officer.

## **Cathal Boylan**

Chairperson, Committee for the Environment, 30 September 2010

[EXTRACT]

### **Thursday 14 October 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mrs Shauna Mageean (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Willie Clarke  
Mr John Dallat

## **8. Local Government Finance Bill – informal Clause by Clause consideration**

12.35p.m Mr Trevor Clarke left the meeting.

12.40p.m Mr Wilson rejoined the meeting.

Mr Beggs declared an interest as a member of Carrickfergus Borough Council.

Departmental officials briefed the Committee and answered members' questions on clauses 1 – 10 of the Local Government Finance Bill.

Agreed: That Departmental officials would provide a worked example to the Committee in relation to Clause 7 of the Bill.

## **Cathal Boylan**

Chairperson, Committee for the Environment  
21 October 2010

[EXTRACT]

### **Thursday 21 October 2010, Room 144, Parliament Buildings**

Present: Mr Roy Beggs  
Mr Cathal Boylan (Chairperson)  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mrs Shauna Mageean (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan  
Mr John Dallat  
Mr Peter Weir

#### **4. Local Government Finance Bill – informal Clause by Clause consideration**

Mr Beggs declared an interest as a member of Carrickfergus Borough Council.

Mr Willie Clarke declared an interest as a member of Down District Council.

Departmental officials briefed the Committee and answered members' questions on clauses 11 – 48 and schedules 1 and 2 of the Local Government Finance Bill.

10.50a.m Mr Trevor Clarke joined the meeting.

Mr Trevor Clarke declared an interest as a member of Antrim Borough Council.

10.58a.m Mr McGlone joined the meeting.

The following actions were agreed during the informal clause by clause consideration:

#### **Clause 14**

Agreed: That the Department is asked if it will introduce a power into the bill requiring consultation on the 'national economic reasons' issue.

## **Clause 24**

Agreed: That the Department is asked for sight of its amendment prior to formal clause by clause consideration which is hoped will commence on 18 November 2010.

## **Clause 27**

Agreed: That the Department is asked to provide details of the formula used for setting the rates support grant and the process used for changing it.

Agreed: That the Department is asked if the formula is rural proofed and subject to an equality impact assessment.

## **Clause 30**

Agreed: That a letter is sent to the Department suggesting the introduction of an early warning system for payments due by councils to departments etc.

## **Clause 34**

Agreed: That the National Association of Councillors is asked for the reasons behind their request for an amendment to this clause.

11.20a.m Mr Wilson joined the meeting.

## **Clause 35**

Agreed: That the Department is asked to provide further information on the estimated costs of the remuneration panel, information on how the panel will be appointed and whether the panel will look at provision for training councillors.

## **Clause 36**

Agreed: That the Department is asked to provide further information in relation to a non councillor receiving expenses.

## **Clause 41**

Agreed: That the Department is asked to provide a list of the professional bodies of which council officials are current members.

## **Social Clauses**

Agreed: That Departmental officials provide the Committee with more information on the ongoing work in relation to the inclusion of social clauses in the Bill.

11.55a.m Mr McGlone left the meeting.



## **Cathal Boylan**

Chairperson, Committee for the Environment  
4 November 2010

[EXTRACT]

### **Thursday 25 November 2010 Room 144, Parliament Buildings**

Present: Mr Cathal Boylan (Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Patsy McGlone  
Mr Peter Weir  
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)  
Mr Sean McCann (Assistant Clerk)  
Mr Nathan McVeigh (Clerical Supervisor)  
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross

#### **5. Local Government Finance Bill – formal clause by clause consideration**

The following members declared an interest:

Mr Willie Clarke – member of Down District Council.

Mr Buchanan - member of Omagh District Council.

Mr Weir – member of North Down Borough Council

10.15a.m Mr McGlone joined the meeting.

10.21a.m Mr Buchanan joined the meeting.

The Chairperson informed members that they now needed to formally consider each clause of the Bill.

#### **Clause 1 – duty to make arrangements**

Agreed: That the Committee is content with the Clause as drafted.

#### **Clause 2 – Accounting practices**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 3 – Annual budget**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 4 – Report by chief financial officer on estimates**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 5 – In-year review**

Agreed: That the Committee is content with the Clause as drafted.

Agreed: That the Committee makes a recommendation in its report on the need to review and strengthen the audit process.

### **Clause 6 – Reserves - general**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 7 – Controlled reserves**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 8 – The general fund**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 9 – Power to establish other funds**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 10 – Limitation on application of funds**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 11 – Power to borrow**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 12 – Control of borrowing**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 13 – Duty to determine affordable borrowing limit**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 14 – Imposition of borrowing limit**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 15 – Temporary borrowing**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 16 – Protection of lenders**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 17 – Credit arrangements**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 18 – Control of credit arrangements**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 19 – Capital expenditure**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 20 – Capital receipt**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 21 – Non-money receipts**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 22 – Use of capital receipts**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 23 – Power to invest**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 24 – Security for money borrowed etc.**

Agreed: That the Committee is content with Clause 24 subject to the amendment proposed by the Department to make orders under sub-section 9 subject to draft affirmative procedure.

## **Clause 25 – Guidance**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 26 – De-rating grant**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 27 – Rates support grant**

10.55a.m Mr Wilson joined the meeting.

Agreed: That the Committee is content with the Departmental amendment to require the necessary information for calculating the rates support grant from councils by determination rather than statutory pro forma.

Agreed: That the Committee is content with the Committee amendment to prevent in-year cuts to the rates support grant.

## **Clause 28 – Reductions in grants under section 26 or 27**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 29 – Other grants to councils**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 30 – Payments due by councils to departments, etc.**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 31 – Allowances, etc. for councillors**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 32 – Allowances for chairman and vice-chairman**

Agreed: That the Committee is content with the Clause subject to the amendment proposed by the Department to introduce gender-neutral language.

## **Clause 33 – Expenses of official and courtesy visits, etc.**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 34 – Expenses incurred in attending conferences and meetings**

Agreed: That the Committee is content with the Clause as drafted.

## **Clause 35 – Panel to advise on payments to councillors**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 36 – Interpretation**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 37 – Payments for special purposes**

Agreed: That the Committee is content with the Clause as drafted.

11.07a.m Mr Weir left the meeting.

### **Clause 38 – Restrictions on power to make payments under section 37**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 39 – Public appeals**

Agreed: That the Committee is content with the Clause subject to the amendment proposed by the Department to introduce gender-neutral language.

### **Clause 40 – Limit on expenditure under sections 37 and 39**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 41 – Subscriptions to certain local government associations and other bodies**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 42 – General interpretation**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 43 – Regulations**

Agreed: That the Committee is content with the Clause subject to the amendment proposed by the Department to allow any regulations to be made under the Bill to include such incidental, supplementary, consequential, transitory or saving provisions as may be considered necessary.

Agreed: That the Committee is content to accept the proposed Departmental consequential amendment to Clause 27 as a consequence of its amendment to this clause.

### **Clause 44 – Consultation on regulations, orders and guidance**

Agreed: That the Committee is content with the Clause as drafted.

11.15a.m Mr Weir rejoined the meeting.

### **Clause 45 – Minor and consequential amendments**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 46 – Repeals**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 47 – Commencement**

Agreed: That the Committee is content with the Clause as drafted.

### **Clause 48 – Short title**

Agreed: That the Committee is content with the Clause as drafted.

11.17a.m Mr McGlone left the meeting.

### **Schedule 1 – Minor and consequential amendments**

Agreed: That the Committee is content with Schedule 1 subject to the amendment proposed by the Department to include an additional statutory instrument.

### **Schedule 2 – Repeals**

Agreed: That the Committee is content with Schedule 1 as drafted.

### **Long Title**

Agreed: That the Committee is content with the Long Title as drafted.

### **Cathal Boylan**

Chairperson, Committee for the Environment  
02 December 2010

[EXTRACT]

### **Appendix 2**

## **Minutes of Evidence**

18 September 2008

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)

Mr Billy Armstrong

Mr Roy Beggs

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Ms Julie Broadway  
Ms Marie Finnegan  
Mr Ivan Gregg  
Mr Ian Maye

Department of the Environment

1. The Chairperson: The next item is a briefing on the draft local government (finance) Bill. On 17 June 2008, the Minister of the Environment, Sammy Wilson, notified the Committee of his intention to bring forward a Bill, subject to the agreement of the Executive, to deal with the modernisation of local government finance, councillors' remuneration, the introduction of a severance scheme for councillors, the creation of transition committees, and the introduction of controls over council borrowing, disposals, contracts and the application of capital receipts and reserves prior to reorganisation.
2. An accompanying policy paper requested that the Committee note the policy content and drafting of the proposed Bill, and the Department's intention to consult on the policy and draft Bill simultaneously. A date for introduction was not provided, but the Department confirmed that the Bill will not proceed by accelerated passage.
3. The Minister informed the Committee by letter that he is considering the possibility of moving the enabling provisions regarding the timing of the proposed severance scheme and the introduction of transition committees into the local government contracts and compulsory purchase Bill. The Minister has not made a final decision on the matter.
4. Committee members have been provided with a copy of the local government (finance) Bill policy paper, and a copy of a letter from the Minister, Mr Sammy Wilson, dated 13 July 2008, which provided clarification on Assembly procedure for the Bill. Departmental briefing notes are included.
5. Ms Julie Broadway (Department of the Environment): The main aims of the proposed local government (finance) Bill will be to modernise the legislative framework for financial management by district councils, to enable the Department to make severance arrangements for councillors, and to introduce preliminary provisions to assist with the reorganisation of local government from 26 to 11 district councils.
6. The proposed Bill will cover four main areas. I will deal with local government finance provisions first.
7. Most of the legislative framework for local government finance has been in place for more than 30 years and requires amendment in order to bring it up to date and in line with current best practice. District councils in Northern Ireland are subject to departmental controls, for example they need to get departmental approval before borrowing, applying capital receipts and applying sums to capital, or renewal and repairs, funds. The proposed Bill will make provision to relax some of the current departmental controls, thereby enabling district councils to manage their financial affairs to best effect on behalf of ratepayers.
8. That will align the framework of local government finance in Northern Ireland with the most appropriate and modern finance practices elsewhere in the UK. The proposed Bill will introduce a prudential regime for capital finance, enabling councils to decide prudent and affordable levels of

debt, in line with guidance produced by the Chartered Institute of Public Finance and Accounting. It will extend to all Departments the power to pay grants in relation to their areas of responsibility, rather than just to the Department of the Environment, which is the case at present.

9. The Bill will make provision in respect of councillors' remuneration and severance. A councillors' remuneration working group was established by a previous Environment Minister in 2005, and it made its recommendations in June 2006. Those included setting up an independent remuneration panel to consider the system, and level, of allowances payable to councillors.

10. Furthermore, the working group recommended the introduction of severance arrangements for councillors. It is proposed that the legislation should implement those recommendations by providing enabling powers for the Department to establish the remuneration panel and to make provision for severance arrangements for councillors who do not stand for re-election. The Department intends to issue a more detailed paper on severance by the end of the year.

11. The Bill will make preliminary arrangements for restructuring local government. In the period leading up to reorganisation, it is important to introduce controls on specific financial commitments by existing councils, so that the new district councils do not inherit unreasonable financial commitments from the date of reorganisation. The aim is to prevent an existing council from binding a new council to sizeable, or long-term, contracts or loan arrangements, or from disposing of land, property or capital receipts and reserves without referral to the other council or councils with which it will join to make a new council.

12. It is proposed that the legislation should require an existing council to obtain written consent from all councils due to join with it in the formation of a new local government district before entering into any of the above transactions that exceed specified financial limits. Departmental officials are in the process of developing a policy in that regard.

13. In addition, it is proposed that the Bill should require existing councils that are due to amalgamate in the formation of a new district council to form joint committees — known as transition committees — to prepare for the introduction of the new councils. The Bill will include an enabling power for the Department to make subordinate legislation to specify the functions and powers of the transition committees.

14. I now turn to the timetable for the local government (finance) Bill. We currently await the Executive's agreement to the policy proposals, and its permission to proceed with drafting the Bill. Subject to the Executive's approval, we plan to consult on the proposals and draft legislation at the end of 2008 and the beginning of 2009. The legislation must come into operation at the beginning of a financial year, and it is anticipated that that will be April 2010.

15. As the Chairperson mentioned, it is likely that the severance and councillors' remuneration provisions, the transition committee provisions, and the controls on council finances in the run-up to reorganisation will be moved into the local government (contracts and compulsory purchase) Bill before its introduction to the Assembly. That would ensure that the provisions are introduced as soon as possible. They are not being moved into the local government (contracts and compulsory purchase) Bill at present because the consultation document on the Bill has already been drafted and we do not want to hold up the consultation process. However, the provisions will have been consulted on before they are moved into contracts legislation.

16. Mr Weir: In discussing the local government (finance) Bill — and, in particular, transition committees — I declare an interest as a member of the policy development panel on governance.



17. I presume that the independent panel will advise on the level of councillors' remuneration allowance and on the severance scheme after 2011. There would not be much point in that panel being set up to look at remuneration provisions before 2011.

18. Mr Ian Maye (Department of the Environment): The Minister's intention is to establish the committee in the run-up to 2011, so that it can provide proposals for remuneration.

19. Mr Weir: I presume that severance will be dealt with separately and not by that panel because it would need to be done a lot more quickly.

20. I appreciate that we are broadly discussing enabling powers for transition committees to be formed by councils.

21. Perhaps a definitive decision has not yet been taken; however, the powers of the transition committees will be dependent upon the attitude to a shadow period. Has the Department come to a definitive view on whether there will be a post-election shadow period? If it has decided that there will not, the powers of the transition committees will have to be fairly strong to deal with such issues as the appointment of chief executives, staffing issues, and a range of other matters.

22. Mr Maye: The Minister has not yet reached a firm view. It is a cross-cutting issue, so he will have to take his firm view to the Executive to seek their agreement on whether there should be a shadow period. There have been discussions in the strategic leadership board on the issue. At its last meeting, the board agreed that it would commission a paper jointly prepared by the Northern Ireland Local Government Association (NILGA) and departmental officials to explore the pros and cons of a shadow period. That paper is due to be considered at the next meeting of the strategic leadership board on 3 October 2008.

23. The Minister's view will be informed by that paper and by the discussion that flows from it. He will then reach a view on whether there should be a shadow period, and engage, as necessary, with others to bring that view to the Executive.

24. Mr Weir: I know that enabling powers have been given, but before anything was put in place as regards severance — either negotiations or discussions with the representative bodies in particular — from a councillor's point of view, the body that played the biggest role in that regard is probably the NAC. Is the intention to hold some level of discussion with that body beforehand?

25. Mr Maye: The Minister already met the NAC to discuss those issues. He assured the NAC that he would work with it to draw up detailed proposals and to consult widely on those.

26. Mr Weir: I was intrigued by the reference to the control mechanisms in relation to capital receipts. I understand — and it is justified — that there is a level of constraint on councils to ensure that they do not take a short-sighted view and attempt to get their money's worth, sell assets or commit to various capital projects.

27. I also understand that there is a need to consult with the neighbouring councils that will form that body. Will the Department have any mechanism to examine whether obtained written consent is reasonable? There could be a situation in which there are two councils, with one council having a particular capital project in mind. The neighbouring council might not be keen on spending that amount of money, and it will refuse. That project could be frivolous, or it could be something that is very much in the public interest. Is there any check or balance to ensure that a council cannot unreasonably block the decisions of other councils' on that basis? Will there be any mechanism — potentially from the DOE or some sort of appeal mechanism from the council — either in relation to the sale of an asset or the building of it to ensure that —

28. The Chairperson: If I could come in on that point, Peter. That will become an interesting area because if a transition body is making a decision in a shadow period, a new council could come in and try to unravel that decision, depending on that council's priorities are. I am intrigued by that.

29. Before you answer, I saw that Mr Gallagher indicated that he sought clarification on an earlier issue.

30. Mr Gallagher: I am afraid that I do not seek clarification. I will make a comment on how messy the approach of the Department is in relation to the arrangements. Prior to 3 July 2008, Minister Arlene Foster came to the Committee and said that there would be no shadow councils. She also said that in the Assembly. On 3 July 2008, the successor to the post, Sammy Wilson, came to the Committee with Stephen Peover. Mr Peover said that there would be no shadow year; instead there would be formal transitional committees. That was his wording.

31. There are significant issues to be taken forward either in shadow or transitional committee form, preferably in shadow form, if a serious attempt is to be made to exercise democratic control in relation to local government in the future.

32. The Department today tells the Committee that it does not know whether there will be shadow committees. In fact, the witnesses have made it clear that the Department is again rethinking whether to form shadow or transitional committees. Therefore, it is disappointing that, after all this time — and when the public feels there is not much Assembly business time to waste — we are again in the situation where the Department cannot make up its mind.

33. Mr Maye: I will respond to that comment first. It is fair to say that the position of the current and the previous Ministers was that they were minded not to have a shadow period. However, in discussion with the sector, through the strategic leadership board and with the parties, it was realised that significant issues had to be addressed before a final and firm decision was taken.

34. The decision on whether to permit a shadow period will have an impact on the powers and responsibilities of the transitional committees. The Department's view, shared by the local government sector, is that transitional committees will be needed. However, the precise roles, responsibilities and powers of those committees will flow from the decision on whether to have a shadow period.

35. Because all of the Department's plans and preparations flow from that political decision, it is something that must be tied down quickly. It is, therefore, something that the Department and its Minister want to address as soon as possible. However, the Minister wants to work with the sector to ensure that everyone understands the consequences of whatever decision is reached.

36. The Chairperson: Mr Weir raised several points.

37. Ms Broadway: I would like to return to the point about checks and balances in relation to the controls. The policy is not full developed on that. We can take those points onboard for consideration.

38. Mr Weir: We must have a mechanism that enables an appeal to the Department in cases involving an unreasonable refusal of written consent.

39. The Chairperson: Does that cover everything that you raised, Peter?

40. Mr Weir: The witnesses have covered most of the points in their answers.

41. Mr Ford: I want to follow through on some of those points, because it seems to me that there are more gaps than detail. I am not blaming the witnesses because there are unknown factors, but it is not satisfactory to be consulted on a Bill in which it is admitted that the issue of a transitional committee is not dealt with in a clear manner.

42. The Minister says nothing in paragraphs 29 and 30 of his memo to the Committee about whether it is planned to have a body that would liaise for a general chat now and again about how things might go; or whether, in the absence of a shadow period, it could be given quite wide-ranging powers. In that context, it is possible that every member of the transitional committee might retire or fail to be elected to the new body. It is a relatively new concept in these islands that anybody should be granted the power to bind their successors in such a way.

43. Specifically, on severance pay, in your submission you promised a paper by the end of the year. There was also talk of moving the issue of severance pay into the local government (contracts and compulsory purchase) Bill. Given that the rest of the Bill will be subject to Executive approval, which may take some time; is an end-of-the-year timescale a reasonable one in which to make those kind of decisions?

44. Ms Broadway: The Bill will contain an enabling provision on severance, and the detail will be in regulations. In order to develop a severance scheme, we propose that the detail go out to consultation by the end of the year.

45. Mr Ford: That will get you off the hook for the next few months, but the detail of the severance scheme will also require proper consultation — even if it is secondary legislation. The problems of this autumn may be solved by leaving everything to secondary legislation, but it will do nothing to advance the course of local government reform, if we are stuck in that position.

46. Mr Maye: It is our intention to consult on the detail of a severance scheme while the Bill's provisions are brought before the Assembly, thereby informing the Committee and the Assembly, as a whole, of the detail of the proposals while they consider the broad enabling provisions of the Bill.

47. Our Minister has taken that view in consultation with all the political parties. The broad intention is to ensure that a fully fledged severance scheme is in place as early as possible — probably in early summer or late autumn — in 2009. Certainly, that scheme should be available from then. Meanwhile, discussions among the NAC, the political parties, and the strategic leadership board continue.

48. Mr Boylan: You talked about a severance scheme for councillors who opt not to stand for re-election. From a personal perspective, would the severance scheme also cover councillors who decide to co-opt for whatever reason? If so, will you clarify when that might happen?

49. The Chairperson: Are we trying to ....? [Laughter.]

50. Mr Boylan: You do not have to answer that last question.

51. Will the severance scheme cover all elected representatives who, for one reason or another, may need to step down or to be co-opted?

52. Mr Maye: The Minister has opened discussions on the issue of co-option with the Secretary of State; it is up to the Northern Ireland Office and the Secretary of State to decide whether to make legislation pertaining to that. Those discussions are at an early stage and have not yet reached fruition. Broadly speaking, the Minister intends to have the necessary arrangements for

co-option, whatever they may be, to be put in place at the same time as the severance scheme is launched, so that the two work hand-in-hand.

53. Mr Boylan: Will you ensure that any remuneration dates back to 2005, Chairperson?  
[Laughter.]

54. The Chairperson: I see what you are getting at.

55. Those among us who are councillors will know that it takes only one objection to a member's being co-opted to scupper the process and to put the decision to a by-election, which brings with it associated difficulties — not necessarily the cost to ratepayers. The legislation should address that key area by ensuring a smooth transition of members.

56. Ms Broadway: The Minister will discuss that issue with NIO, which governs the legislation required to address that issue.

57. Mr Gallagher: I want to return to the issue of the timetables for the two Bills. You said that the local government (contracts and compulsory purchase) Bill must come before the Assembly in February 2009. You also said that the local government (finance) Bill — which provides for the formation, functions and powers of transition committees — will go out to consultation in late 2008 or early 2009. Towards the end of your presentation, Julie, you said that parts of the local government (finance) Bill may be incorporated into to the local government (contracts and compulsory purchase) Bill.

58. I think that the parts of the local government (finance) Bill to which you referred relate to transition committees. Therefore, as Mr Ford said, it is a new concept to have councils going out of business and making all the decisions for their successors who have yet to be elected. As it is such a complicated and detailed matter, it is not very satisfactory, at the eleventh hour, to start piling detailed matters from one Bill into another Bill that is before the Assembly.

59. We know how these things work. There would be very little time for any discussion about the matter. There may be a consultation period, but it is unsatisfactory for the Department to take short cuts when making serious business decisions, which will have huge implications for the way in which local government and their workers, including those in the most senior positions, operate in the future. Yet, you are suggesting that that is what the Department may do.

60. Mr Maye: Perhaps it would be best if I explain why the Minister feels that such action might be necessary. His views were not formed by a discussion with his departmental officials. He has explored with us the feasibility of moving certain provisions on severance and transition committees across to the local government (contracts and compulsory purchase) Bill, because his party colleagues and other political parties made a request for a severance scheme to be put in place at the earliest possible date in the run-up to the creation of the new councils in 2011. That is why he asked us to keep that possibility open and to ensure that the Committee is briefed on it.

61. Furthermore, the Minister is receiving representations from party colleagues, from other parties and from the strategic leadership board, requesting that we should aim to have formal statutory transition committees in place as early as possible in the implementation process leading up to the creation of the new councils in 2011. Therefore, the Minister is not putting forward those proposals on a whim. They are the result of discussions with colleagues on the strategic leadership board and with other political parties. However, no firm decisions have been taken on whether that is the route that we will take. The outcome very much depends on the discussions that we have with the Committee, on discussions that the Minister has with his party

colleagues and others, and also on discussions within the strategic leadership board and the policy development panels.

62. Mr Gallagher: In relation to transition committees, my party colleagues on the strategic leadership board have not indicated that they want business to be done in that way. That is a fact.

63. Mr Maye: The reason that we are exploring the shadow-period issue again is that those involved want to ensure that the arrangements that are put in place for transition committees are agreed by all parties and are agreed across the sector, so that we have a clear understanding from the outset about what those committees are set up to deliver and why. That view is being put forward by all the parties on the strategic leadership board. They want to ensure that we have a clear understanding as to what the committees are empowered to do.

64. The Chairperson: There is more talking to be done and decisions to be taken.

65. Mr Maye: A fair bit more.

66. The Chairperson: Paragraph 7 of the draft policy paper relates to the proposal of a new borrowing power so that district councils will be free to raise finance for capital expenditure, without the need for prior approval from the Department. Forgive my ignorance in these financial matters, but in his draft policy paper, the Minister says: "I also propose reserve powers for my Department to set limits on borrowings and credit but I envisage that these would only be used in exceptional circumstances."

67. How do you ascertain that a council has gone beyond the limit whenever the deed is already done? If the councils are given the independence to do what they will, but at the same time the Department reserves powers to set limits on borrowing, the two do not seem to be compatible, unless there is a mechanism that I am missing, or has not been worked out yet.

68. Mr Maye: We see that situation replicated in other parts of the UK and in other jurisdictions. The intention is to relax the borrowing regime to make it easier for councils to put forward their capital programmes, finance those programmes and develop their services. The reserve power is a power of final resort, where it is clear that the council has gone, or is proposing to go, well beyond the pale.

69. The Chairperson: That is the issue. How is that power triggered, other than a council member saying that he or she opposes the level of borrowing and will bring the matter to the attention of the Department? The action may be too late, or it may be illegal.

70. Ms Marie Finnegan (Department of the Environment): The controls that are available under the Local Government Act (Northern Ireland) 1972 are very tight. A council requires departmental approval if it wants to borrow money to build a leisure centre, for example, or to buy a vehicle. Local authorities in GB are subject to more relaxed controls, and are left to draw up their own capital programmes. However, they must assure their ratepayers that what they are doing is affordable, prudent and sustainable. Councils in GB set their own borrowing limits. They set their capital budgets in their annual budgets, within which they must determine their borrowing limits.

71. That system seems to work quite well in other regions. It is backed up by the Prudential Code, which sets out benchmarks and provides guidance. We plan to mirror the GB pattern. It is new to us, but it would loosen up matters for councils and allow them to take control. The auditors would still come in at the end of the day to ensure that any borrowing, any loans were being serviced.

72. The Chairperson: I am trying to get this into my head. Forgive me for drawing such an analogy, but, say, if a council turns radically left or bolshie and makes a decision — that kind of scenario — by the time the auditors arrive the decision will have been taken. It is a case of closing the stable door after the horse has bolted. I am trying to determine how such a system could work. I understand the principle and the theory, and that it will allow councils some autonomy, and some extra elbow room to make decisions without having to go back to the Department on every occasion. On the other side, what is the mechanism for allowing that reserved power to be used?

73. Mr Maye: There are several mechanisms that can initiate the process. It could be a complaint from a member of the public who is concerned about a council's spending plans, or a complaint from one or more councillors. There could be a challenge within the council on the basis of whatever new governance arrangements are agreed. Such a challenge could be submitted to the Ombudsman or to the Minister.

74. The Chairperson: What I am trying to get at here is whether there is a requirement? You are expecting someone out there to have the goodwill and ability to do it themselves, the ability to look at it and decide that it is a bit through-other. Is there an onus or duty upon officers to do that?

75. Mr Maye: A reporting mechanism?

76. The Chairperson: I wonder whether it works that way elsewhere. It may well never have occasion to happen. However, there seems to be a concept built in here without mechanism.

77. Mr Maye: We will explore what the arrangements are in England, Scotland and Wales, and find out how it is used in practice, if at all. My understanding is that it has been used very infrequently.

78. The Chairperson: It will be interesting to hear when it has happened and if it has happened too late — that sort of thing.

79. Mr Ford: I appreciate that the answer to this question is "I do not know", but I ask it anyway. What exact provisions of the draft local government (finance) Bill are being considered for transfer to the local government (contracts and compulsory purchase) Bill? We understand that they include the severance payments and the transition committees, but does it also include the potential transitional financial controls?

80. Mr Maye: No. At this point, consideration is limited primarily to severance provisions and possibly to the transition committee provisions as well.

81. The Chairperson: There are no further questions from members. Thank you very much indeed for attending today. Undoubtedly, we will be seeing you again.

23 April 2009

Members present for all or part of the proceedings:

Mr Patsy McGlone (Chairperson)

Mr Cathal Boylan (Deputy Chairperson)

Mr Roy Beggs

Mr Trevor Clarke

Mr David Ford

Mr Tommy Gallagher

Mr Ian McCrea  
Mr Daithí McKay  
Mr Alastair Ross  
Mr Peter Weir

Witnesses:

Ms Julie Broadway  
Ms Marie Finnegan  
Mr Tommy McCormick  
Mr Denis McMahan  
Mr George Craig  
Mr Ciaran Quigley  
Mr Damien McMahan  
Mr Eamon Molloy  
Mr Gev Eduljee  
Mr Marshall Hay  
Mr David Palmer-Jones

Department of the Environment  
arc21  
North West Region Waste Management Group  
SITA UK

82. The Chairperson (Mr McGlone): I welcome Ms Marie Finnegan, Ms Julie Broadway, Mr Denis McMahan and Mr Tommy McCormick from the Department of the Environment. I invite you to give the Committee an overview of the draft Local Government (Contracts and Compulsory Purchase) Bill. You have been asked to remain after you give your evidence, because representatives from the other groups, including SITA, may raise issues from which we might learn something. The Department may have overlooked something or could benefit from learning about experiences elsewhere. Similarly, the other groups may learn from your experiences.

83. The consultation on the draft Local Government (Contracts and Compulsory Purchase) Bill ended on 12 March 2009. At our meeting on 11 December 2008, the Committee requested a departmental briefing on the synopsis of responses to that consultation. Members should note that the draft Bill makes provision for local authorities to establish long-term financial arrangements under public-private partnerships (PPPs) and public-private initiatives (PPIs) to enable Northern Ireland's landfill-directive obligations to be met.

84. The draft Local Government (Finance) Bill has been delayed, but, owing to time pressures, the Department is considering consulting on the severance and transitional-arrangements elements of the draft Bill separately in advance, before adding them to the Local Government (Contracts and Compulsory Purchase) Bill. The relevant consultation documents will be considered later in the meeting.

85. Members should note that the Committee has given a commitment to the Department that it will not seek an extension to the Committee Stage of those draft Bills, and the Department has agreed not to seek accelerated passage. However, in Committee on 26 February 2009, the Minister said that the squeeze on time is getting tighter because the draft Local Government (Contracts and Compulsory Purchase) Bill has not yet received Executive clearance.

86. Mr Weir: I forgot to mention at the beginning that, should there be any discussion on the transitional arrangements, I declare an interest as a member of one of the transition committees and, more pertinently, of policy-development panel A, which is tasked with the governance of the transitional arrangements.

87. The Chairperson: Thank you for that. Members' packs contain a synopsis of responses to the consultation on the draft Local Government (Contracts and Compulsory Purchase) Bill, along with copies of the policy documents for that draft Bill and for the draft Local Government (Finance) Bill. Written updates on the draft Bills are included for Committee members' information.

88. Julie will give the Committee an initial overview of the draft legislation. I ask that you take 10 or 15 minutes in which to do that, before taking queries from members.

89. Ms Julie Broadway (Department of the Environment): I thank the Committee for affording us the opportunity to brief it on the consultation responses to the draft Local Government (Contracts and Compulsory Purchase) Bill. In addition, I will update members on the current position of the draft Local Government (Finance) Bill.

90. First, I shall introduce my colleagues and tell you about their specific interests in the two draft Bills. Denis McMahon is from the Department's planning and environmental policy group (PEPG), which deals with the waste-infrastructure programme. Marie Finnegan is the head of the finance branch of the local government policy division (LGPD), and Tommy McCormick and I are from that division's policy and legislation branch.

91. We last briefed the Committee on the two draft Bills in September 2008, so I will bring members up to date with what has happened with both since then. On 5 March 2009, the Executive gave policy clearance for the draft Local Government (Finance) Bill. Instructions have been sent to the legislative draftsmen, and the Bill is being drafted. It is anticipated that it will be drafted by the end of May 2009, when we will seek the Executive's approval to commence consultation on both the policy and the draft Bill. We hope to be in a position to consult on the proposals from July to October. The consultation will take place over the summer, so we are aiming to conduct a four-month consultation. The consultation document will, of course, be referred to the Committee before it is issued, and we will send the Committee a synopsis of the responses once the consultation period has concluded.

92. The Local Government (Contracts and Compulsory Purchase) Bill will take the form of a local government Bill rather than a contracts Bill, because of the need to add certain measures from the draft Local Government (Finance) Bill to it. The main purpose of the legislation will be to clarify councils' power to contract with the private sector in order to remove any concerns that contractors and their financiers may have about entering into such contracts. That will reduce the possibility of delays, particularly in the waste-infrastructure procurement process. In addition to the provisions on local government contracts, the Bill will contain provisions to enable councils to acquire land by means other than by agreement, such as vesting for waste-management purposes.

93. In our evidence to the Committee in September 2008, which I have already mentioned, we indicated that two other elements will be added to the Bill: severance arrangements for councillors; and transition committees. For the Committee's information, the consultation documents for those provisions have been issued, with a closing date of 31 May 2009.

94. The main aim today, however, is to brief the Committee on matters for which consultation has already taken place, primarily on contracts. The consultation document, which included a copy of the draft Bill, was issued in December 2008, with a closing date for replies set at 12 March 2009. We received 14 replies to the consultation: seven from councils; three from waste-management groups; and two from other local government bodies. We have forwarded a synopsis of those replies to the Committee, together with the Department's response to the points that were raised.

95. We are happy to take questions in response to the matters that I have outlined.



96. Mr Weir: I seek some clarification on a couple of points. Am I right to assume that the compulsory-purchase powers for vesting apply not only to councils but to groups of councils? For example, would each of the three waste-management groups be able to avail itself of those powers?

97. Mr Denis McMahon (Department of the Environment): That is correct.

98. Mr Weir: Much focus and, to be fair, urgency has been directed towards waste management as a result of the European Union's focus on it. I presume that there may be implications for the future, both good and bad. If, for example, shared services were being considered as part of the review of public administration, would there be opportunities for groups of councils to come together to avail themselves of those powers?

99. Ms Denis McMahon: Yes.

100. Mr Gallagher: The urgency to which Mr Weir referred is an important element. Given the pace of development heretofore, I do not quite see how the development of public-private partnerships will match that urgency. In the great majority of public-private partnerships, there is a history of delays and further delays. Given the different economic climate that we are experiencing, such delays will continue to operate for the foreseeable future. What are your views on the need for urgency in the development of public-private partnerships?

101. Mr Denis McMahon: There are two points to be made. First, we must ensure that there is confidence in the market. Frankly, there is no point in entering into any tendering process unless one is going to get an appropriate response from the market. We have had a strong response from the market, as demonstrated by the number of bidders, and, so far, we have two waste-management groups at that stage of the procurement process.

102. That is one area that may be a bit better than some other areas of private investment, because a public-private partnership is a long-term, fairly safe type of contract for the private sector to enter into. However, it is very important that legislation is in place to reassure potential private-sector partners that the councils are going to have the appropriate vires. In the past, in England, there have been cases in which councils have found that something has gone wrong but have not had the power to address the problem or make the payments. That is the sort of thing about which the banks get very nervous.

103. When we get to the financing stage, several options are available. We tend to think of public-private partnerships as having one particular model, which is the one that applied in the past. However, one of the distinguishing characteristics of the procurement exercise is that, through the strategic waste infrastructure fund (SWIF), which is published, we will probably end up using some Government capital. Therefore, it is not necessarily a case of going to the bank for everything. In fairness to the waste-management groups — one of which the Committee will be talking to today — and without getting into the issue of public-private partnerships, as far as budgets go, they have met all their timetable targets very effectively. That is what we need to see now that we are in the middle of a procurement process.

104. At a later stage in the procurement process, an opportunity will arise to address the funding issue, but that will depend on the market conditions throughout. Between now and the end of 2010, when the contracts will be ready to be signed, we must have absolute clarity on the issue of vires. This is a very important step in that process.

105. Mr Gallagher: You said that you are confident that, in the waste sector, such partnerships will move forward fairly quickly. If I understood you correctly, you said that it will be different in

the waste sector than its will be in those sectors in which we have been developing public-private partnerships. Is that correct?

106. Mr Denis McMahon: All the sectors have different strengths and weaknesses, and one of the strengths of the waste sector is that it provides a service that will definitely be required. It is secure, because long-term solutions are required. That reassures the banks, perhaps more so than other sectors do.

107. Mr Gallagher: The business will always be there, so to speak.

108. Mr Ford: I shall make a couple of procedural points. In annex A to your letter to the Committee of 20 April 2009, it states: "There has been a slight slippage in the legislative timing for the Bill and it is now expected to become operational from November 2009."

109. Are you confident that there will be enough time for the Bill, including the added provisions to deal with severance and transitional arrangements, to have a proper Committee Stage and still be enacted by November 2009?

110. Ms Broadway: Yes, the provisions on severance and the transitional arrangements are enabling provisions. The body of the provisions will appear in the more detailed regulations. We are confident about that.

111. Mr Ford: Good. All nine respondents referred to aspects that they considered necessary in what was described as the "next phase of legislation". Their request for a power for councils to take part in a joint venture is to be addressed a forthcoming local government Bill. What is the timing for that particular Bill?

112. Ms Broadway: We will not be in a position to have those provisions in place in time for the third Bill that we plan to introduce, which will be known as the Local Government (Reorganisation) Bill. We are working on the policy proposals for that piece of legislation, so those provisions will appear the next Bill. Therefore, that will happen after May 2011.

113. Mr Ford: Is that likely to satisfy the need for the development of joint ventures?

114. Mr Denis McMahon: No. If that need exists, it is not likely. However, the key question is whether that need exists. The waste-management groups are currently working towards having a project structure that will not require a joint venture. Therefore, at this stage, we do not see a joint venture as being a real option. However, it is useful and important to have that option. We would like to have that option in place, and, in an ideal world, we would have it in place now.

115. Mr Ford: Are you satisfied that, for the next three or four years, the three existing groups will be adequate?

116. Mr Denis McMahon: We are content that a joint venture will not be required for the purpose of those procurement processes that are currently under way. However, we would like to have provisions on the statute books in the event of their ever being required in future. The waste-management groups have raised some other points that, it is important to stress, are absolutely critical. The powers to make guarantees, warranties, and indemnities will have to be in place in time for the contracts to be signed in 2010. Those powers are all being built into —

117. Mr Ford: I appreciate that, under your suggested timescale, those powers should be included in legislation very soon.

118. Mr Denis McMahon: It is critical that they are. If they are not in place soon, that would cause us a problem, but we are very confident that those will be put in place through the waste Bill, proposals for which are currently out for consultation.

119. The Chairperson: When will that consultation be completed?

120. Mr Denis McMahon: It will be completed at the end of May.

121. The Chairperson: Thanks you. I ask you to take a seat in the Public Gallery, please, because we may need clarification on some points that other witnesses raise.

122. The next item is the briefing by arc21 and the North West Regional Waste Management Group (NWRWVG) on the draft Local Government (Contracts and Compulsory Purchase) Bill. Representatives from SWaMP2008 are unable to attend today.

123. The committee contacted arc21 and NWRWVG on 3 March 2009 to request details of their responses to the consultation on the draft Bill. A copy of the response from SWaMP2008 was received and has been included in members' packs. Representatives from arc21 and NWRWVG have been invited to brief members on their views on the draft Bill.

124. We are joined by Mr George Craig, who is the financial director of arc21, and Ciaran Quigley, who is its legal adviser. Damien McMahon from Derry City Council also joins us — tá fáilte romhat, a Uasail Mac Mathúna — as does Eamon Molloy, who is NWRWVG's development officer. You are all very welcome.

125. The evidence session will follow much the same format as the departmental briefing did. You will be given 10 or 15 minutes in which to brief the Committee, and there will then be an opportunity to answer members' questions. I am sure that you will feel at liberty to tell us about any issues that may not have cropped up during the questioning of the departmental officials, or about any likely problems or possible solutions.

126. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council.

127. Mr Eamon Molloy (North West Region Waste Management Group): I begin by thanking the Committee for giving us the opportunity to appear before it again. We view this meeting very much as a follow-up to our previous engagement with the Committee at the end of 2008, when local government raised the issue of vires and legislative provision.

128. We wish to speak specifically today about the waste-infrastructure programme in which we are all engaged. It is fair to say that developments have occurred since we were last in Committee, and that will be referred to in due course by our legal representatives here today. Local government's chief concern is that a sufficient legislative framework be in place to allow the waste-infrastructure programme to be implemented, allowing it to meet its obligations; that is, to meet its targets to avoid potential fines. Another issue is when the necessary legislation will pass through the House.

129. At the outset, I should have apologised for the absence of our colleague from SWaMP2008, who is unable to attend today.

130. The Chairperson: Do you have concerns about the timing of the legislation?

131. Mr E Molloy: No. We heard earlier from departmental officials that the timings should be satisfactory. At our previous meeting, the Committee raised the issue of timings, but things have moved on since then.

132. Mr George Craig (arc21): On behalf of arc21, I thank you for the invitation to appear before the Committee. I offer apologies from our chief executive, John Quinn, who cannot be here today. We welcome developments on the issue of vires. It is an important issue for arc21 and local government, and, in particular, for generating greater confidence. We are inviting submissions of outline solutions, which is a very important stage of our procurement process. We anticipate that, over the next year and a half, we will reach the stage at which we will award a contract at the end of 2010. Therefore, it is encouraging that, for bidders' confidence, the issue of vires is being addressed progressively. Ciaran Quigley, who is the legal adviser for Belfast City Council, will address legal issues for the draft Bill.

133. The Chairperson: Do you have anything to add, Mr Quigley?

134. Mr Ciaran Quigley (arc21): I act in the role of general legal counsel for arc21. We have been considering for some time now the issue of vires for major waste-disposal contracts that we are about to enter into. We had a number of specific issues that we originally thought would not be addressed in the draft Local Government (Finance) Bill. However, the situation has moved on somewhat, and the Department has now produced a draft waste Bill, which will pick up on some of our concerns over what is not covered in the draft Local Government (Contracts and Compulsory Purchase) Bill. Therefore, we view the legislation in a positive light, but we hope that outstanding matters will be addressed by the draft waste Bill. The only issue for us now is one of timing.

135. We thought that the Bill did not cover the technical issues concerning the vires — the powers — of local authorities in Northern Ireland over waste contracts or any big PPP/PFI contract. For example, we have concerns about the powers of district councils to give guarantees, warranties and indemnities when working in a subregional situation. That is the situation at present with the three subregional groups that have been established. Therefore, a question arises about whether one council could guarantee the performance of a contract by another council or, indeed, by the subregional group. That was a legal concern. Another concern is the issue of councils entering into joint and several liability arrangements.

136. Another substantive issue, which was mentioned earlier, is the whole question of joint-venture arrangements, and the power of district councils and subregional groups to enter into such arrangements. In our view, none of those issues is covered by the draft Local Government (Contracts and Compulsory Purchase) Bill, which is really a translation of legislation that was brought into force in Great Britain in 1997.

137. However, the fact that the Government have now recognised that those are issues that need to be resolved, and that the vehicle for doing that is the waste Bill, we are much more comforted. Our only concern is the timing, and at this stage, we do not know the timing for the waste Bill.

138. The Chairperson: You seem to be fairly satisfied, except for the timing of the Bill. If there is anything that you need clarified, the Committee can request that that be done here today.

139. Mr Damien McMahon: The issues mentioned by Mr Quigley are, to a very great degree, common to all three groups, and we would not take away from them. The Department did, I believe, propose initially that some of the issues that needed addressing would be addressed through the two forthcoming Local Government Bills, which are designed primarily to cater for the arrangements under RPA.

140. However, now we have the waste Bill, and I must say that, at first glance, it seems very much to address the issues that were talked about. In general, therefore, we are content enough with how things are progressing. With regard to timing: I believe that we had identified with the Department ?and it had accepted ? that the draft Local Government (Contracts and Compulsory Purchases) Bill does not, in itself, really address the necessary vires issues.

141. A central point that we made was that those are such major contracts, much bigger than anything in which local government has been involved, that there needs to be specific, direct legislative provision rather than having to rely on a hotchpotch of powers. One concern that we had about the draft Local Government (Contracts and Compulsory Purchases) Bill was that it does not address the vires issues; it is geared more towards providing comfort to contractors. That, in itself, is important, too, but it should not be regarded as a Bill that provides powers to local government in the context of that waste.

142. A central part of the draft Local Government (Contracts and Compulsory Purchases) Bill is "safe harbour" provisions. That applies to all council functions, and not specifically to waste management, although that was the trigger for the Bill. Our concern all along was that, yes, in itself, that is good, but it is not enough to deal with all the issues that are raised. However, I agree with Mr Quigley that as things have developed, and as we heard from the Department today, they seem to be moving along satisfactorily.

143. The Chairperson: Thank you.

144. Mr Beggs: You said that the timing is crucial. I take it that in order for you to get the quotations for which you are hoping in the PPP stage, all those items have to be in place at the appropriate time. Just to be clear: are you saying that the waste Bill could end up being the critical timing issue for when you can trigger that process?

145. Mr Damien McMahon: Yes, I think that the waste Bill will be critical, and we would want to be sure that by the time that we come to contract-signing, the provisions that, it appears, will be in the waste Bill are in place.

146. The Chairperson: What would be the earliest potential time for signing?

147. Mr G Craig: The end of 2010.

148. Mr Beggs: Surely, it would need to be in place well before that so that those who are tendering would have that degree of certainty.

149. The Chairperson: We shall clarify that with the Department. There are several issues on that. It comes down to the issue of timing. The date that we were given previously for closure of consultation on the waste Bill should have been 3 July 2009, not the end of May.

150. Thank you for that. Another private firm is here to share its views. I am sure that you are known to each other, and I would be surprised if you have not met. I ask you to stay with us. Thank you.

151. Go raibh mile maith agat.

152. We will now have a briefing from SITA UK on the challenges facing waste management. I advise members that Mr Noel Brady from SITA wrote to the Committee in September 2008 to ask to brief us on waste-management issues. At our meeting on 18 September, the Committee

agreed that representatives from SITA should be invited to attend a future meeting to consider the Local Government (Contracts and Compulsory Purchase) Bill.

153. SITA UK has provided a memorandum on the challenges facing waste management, and members should note that SITA welcomes some of the initiatives that are included in the strategy document, especially the removal of the link between best practicable environmental option (BPEO) and the planning process bringing Northern Ireland in line with other Administrations. I advise members that the Waste Management Advisory Board called for clear leadership to enable the strategy to be implemented as planned. Members should note that SITA endorses that recommendation and hopes that the structural changes related to the planning process will support and deliver Northern Ireland's waste-management strategy.

154. Mr David Palmer-Jones, chief executive officer (CEO), Gev Eduljee, public affairs director, and Marshall Hay, development officer for Northern Ireland are here from SITA UK. You are all very welcome to share your knowledge and practice with us. You have heard some of the presentations that have been made today. If you have any comments or observations to make on those, you are welcome to do so. I ask you to take a maximum of fifteen minutes, and members will then put their queries.

155. Mr David Palmer-Jones (SITA UK): Thank you, Mr Chairman, for inviting us to present to the Committee. I am the CEO of SITA UK. Gev Eduljee is the head of external affairs, and Marshall Hay is the commercial manager with SITA Northern Ireland.

156. SITA UK has had a waste-management operation in Northern Ireland for over 10 years, and it is the largest service provider here, employing over 90 staff. We are particularly pleased to have been given the opportunity to come to speak to you about some of the current issues that you face. We approached the Committee with a view to giving evidence in 2007. That is clearly included in the minutes on your website. As the waste agenda gathers pace, our appearance today is timely.

157. It is also, perhaps, rather sensitive. You are, undoubtedly, aware that we are responding to a call for tender from arc21 for the provision of waste-management services, so we are acutely aware of the need to preserve the integrity of the bidding process, both from the standpoint of SITA UK as a bidder and from that of arc21 as a tendering authority.

158. With that in mind, we respectfully decline to respond to questions that relate specifically to arc21 waste-management plans and to the details of our bid, and to questions that might be construed as compromising the bidding process. However, with that proviso, we are more than happy to speak to and engage with the Committee on general issues relating to the delivery of Northern Ireland's waste-management strategy.

159. Waste management in the UK is undergoing a radical change as the policy landscape responds to EU legislation on landfilling, to the treatment of waste materials as a second resource in the revised waste framework directive and, especially, to the climate change agenda, which has brought renewable energy and resource conservation to the forefront of policy development. Waste management is now recognised, rightly, as playing a key role in developing a low-carbon strategy for the UK.

160. Along with the rest of the UK, waste management in Northern Ireland is influenced by a number of common but interrelated drivers, which were discussed in our submitted memorandum. However, I will pick out the four main elements, because it is important for members to understand.

161. First, the legislative requirement for the diversion of municipal waste from landfill will require the creation of an alternative new infrastructure comprising a range of technological options for the treatment of specific material streams and the residual stream. Delivery of that infrastructure poses planning and funding challenges, which have to be resolved within the timescale allowed by the landfill directive, if onerous penalties are to be avoided.

162. Secondly, the landfill tax, which is apt at present, is a critical business driver. It is currently at a level of £40 a ton, which favours, marginally, the recycling recovery option over direct landfilling. That, perhaps, applies to commercial industrial waste in particular, but, as the tax increases, it is becoming more of an issue for local government. The UK Government have consulted on the future development of landfill tax, and as announced in yesterday's Budget, it will increase further by £8 a ton, to reach £72 a ton by 2013. That puts it among the highest in Europe. That increase will only add further pressure on the planning process to deliver an alternative capacity in the timescales.

163. Thirdly, funding is an important element. The senior debt market, as members will understand, has undergone a rapid change in the past year as a corrective to the credit squeeze in the wider economy. That applies to all types of projects, including PPPs and PFIs. Senior debt-funders are more risk averse now, and, often, they are seeking returns over a shorter period. That pushes up the cost of debt financing and, therefore, the overall cost of the service.

164. Fourthly, planning is also an important element. We comment on the challenges in delivering planning consent, even when applications, such as this, are plan-led. We stress the importance of strand six in the national waste strategy, which deals with learning and communication and the partnership approach to the process of infrastructure delivery. Four stakeholders have a part to play in ensuring that the national waste-management strategy is implemented. If there is one message that I would like to leave you with, it is that leadership and community engagement are at the heart of infrastructure delivery. Plan-led infrastructure and delivery presuppose that the community that is participating in a consultative process owes its waste strategy to the waste authority and that the latter should express and act on the wishes of its community.

165. By the same token, a service provider such as SITA UK has an equal responsibility to engage with the community vis-à-vis safe operation, environmental protection and contributing to the local economy.

166. The Chairperson: You are a big conglomerate with a lot of experience in this industry, what lessons can we learn from your experience elsewhere?

167. Mr Palmer-Jones: When I look at the situation in Northern Ireland, I see a pragmatism. One of the biggest issues is planning. If there is one element that causes difficulty in producing the infrastructure that is required to meet the new challenges, it is planning. Northern Ireland has the ability, because your planning structure is slightly different to those in England, Wales and Scotland. Your process has a more strategic element, which allows the more difficult and more sensitive strategic planning permissions to be agreed. In that sense, you have the capacity to do it. However, I come back to the need for consultation and leadership. You face major planning issues, and there will be a requirement for strong leadership from the Committee and the other local politicians who will make the decisions.

168. Mr Ford: In the past, some of us have perhaps taken the view that the three waste-management groups are small in comparison with some of the potential authorities that are planned for GB. Do you have any views on that? Clearly, those three groups are providing leadership that could not be provided by the 26 district councils. Should we perhaps be considering moving to a single authority for Northern Ireland?

169. Mr Palmer-Jones: As you can appreciate, that starts to stray into difficult territory. Our business runs on volume. In order to get cost-effective treatments, volume is quite important. Thus, the idea of bringing the 26 councils together into three groups was, initially, an intelligent move. We do not see any of those groups as being of a size that would not attract some form of interesting competition or not give the volume effect that our business requires to give a good price. I do not think that you should be concerned with that.

170. Mr Ford: You referred to the proposal for a £72 a ton landfill tax. Clearly, that is getting beyond what you described as the marginal position. At this stage, what experience has SITA had of the different technologies?

171. Mr Palmer-Jones: We talk in terms of the tipping point. Gavin and I were involved in the consultation with the Department of Environment, Food and Rural Affairs (DEFRA) on the landfill tax. We encouraged the Department to increase the landfill tax. Today, at £40, it has a marginal effect on allowing other technologies to come into play. At £72 a ton, the price for alternative treatments will approach £100. That will happen quite soon — 2013 is not so far away — and will mean that all other forms of technology — such as energy from waste, anaerobic digestion, in-vessel composting, and, of course, recycling, which is already an influence — will become available. That visibility will give the private sector confidence in its investment. We told DEFRA that it is very important for us to have that visibility in order to plan for the future, given that we know that the tipping point will be reached around 2010. It allows us, and gives us confidence, to continue with our planning and with the building of the new infrastructure, which is required to meet your targets.

172. Mr Ford: As a company, has SITA had any experience of technologies such as anaerobic digestion (AD)?

173. Mr Palmer-Jones: Absolutely. Five or six years ago, perhaps certain technologies, such as AD, were feared, or seen as being more avant-garde. However, having asked the interested parties to find a balanced approach using new solutions — from organic solutions to energy from waste — we have seen a lot of money going into new technologies. As a result, those new technologies have become much more robust. It comes back to the need for robust solutions, specifically on PPP contracts, so that funders will be interested in them. I think that we are seeing a continued improvement in technology, which allows for the tipping point to be reached and for new technologies to arrive on the scene. Obviously, we are very encouraged by that.

174. Mr Beggs: One of the financiers dropped out of the hospital project in Enniskillen, although I think that the money has since been recovered. Does, what could almost be described as, the nationalisation of some of the banks mean that the Government will be able to apply pressure so that money will be available for projects such as that?

175. Mr Palmer-Jones: Take Manchester as an example. It has an extremely complicated PFI solution, through which the Treasury created a fund, as was mentioned earlier, to assist in the latter stages of such projects. The fund provides what is perhaps the final part of financing, to make sure that projects are delivered. If you have a good, robust solution, and the risk is apportioned in a fair manner, good projects will still get funding. We still have the ability to find funding, even long-term funding, as long as the structure of the deal is sensible and robust, and the technology, as I said, is of a more pragmatic nature.

176. Mr Beggs: Do you see what is coming together in Northern Ireland as fitting into that category?

177. Mr Palmer-Jones: I do not see anything that worries me. As I said earlier, people in Northern Ireland have a pragmatic approach. I will leave it at that.



178. Mr Ford: You may have heard the earlier discussion about Rose Energy's plan for chicken-litter incineration, which is a technology that has not attracted community buy-in. Will you provide us with some information on the work that you have done with community engagement, which you highlighted in your paper?

179. Mr Marshall Hay (SITA UK): It is important to meet the community. SITA has been providing exclusive support to businesses and the community in Northern Ireland through arena network. That is a community action programme, which is tailored to meet with communities to find ways to help and support them in implementing activities such as litter-picking, tidy-ups and initiatives for their homes.

180. We have held three workshops in Belfast, Ballymena and Londonderry, which were well attended and positive. On meeting with local people, we focus on ensuring that they take ownership of what is happening. It has been positive, and SITA has done that for quite a while.

181. Our children are Northern Ireland's future. SITA has provided environmental information through the classroom 2000 network for Key Stages 2 and 3. The pack has been put together by education professionals, and it has been well welcomed. It is important to put the information to the community. The problem arises if the community is not brought along with the project; that can result in problems. The community needs to own a project and to buy into it.

182. Mr Gev Eduljee (SITA UK): The general principle with which we approach consultation is to engage as early as possible. Most of our contracts are won on the strength of specific technological solutions. In the early stage, following the award of contract, we are able to develop information sheets and other information regarding the technologies and how they fit together in providing the overall solution for the community.

183. We also provide information about the company. For instance, we provide information on our compliance record and details on what and where we operate. We also invite communities to engage with us; we have nothing to hide. Communities can visit any of our facilities and talk to us about any aspects of our proposals.

184. If a site has been allocated as part of a contract, we are able to do things at a more local level. In such cases, we engage with the local parish councillors and other local representatives and leaders, and we like them to visit our facilities. Some companies have run competitions in which they have asked the local community to design key facilities in their area. That gives them an opportunity to decide what type of technologies they want and what they want to see done with plants' outputs. Such suggestions must be within limits, because there are contractual obligations to meet.

185. Once planning applications have been submitted, there is a statutory duty to engage. We do that by trying to spread our proposals as far as possible. Roadshows are one way in which to engage with the public and to encourage comment. That is separate to what local authorities have to do as part of their statutory job in community involvement.

186. All round, we have found that the earlier we start, the better it is for all concerned — projects come to fruition at the earliest possible time. Of course, there is no guarantee for that. In extremis, a community can reject an application. In that case, there is a statutory right of appeal, and matters are settled at that stage. We would prefer not to go to that stage because it means more delay, but that does not obviate the principle of starting early on both sides.

187. The Chairperson: Unless any other member has anything to add or has a query, I thank you for your time, gentlemen. Invariably, if this process goes on, we will meet again at some stage. Thank you for sharing your experiences.

188. I will ask one of the departmental officials to clarify the issue of the timing. There is a fairly consistent theme there. Can you give us a specific outline of the timing of the sequence that we are going through?

189. Mr Denis McMahon: I apologise for giving the wrong date earlier; that did not help. We are out to consultation; that is due to end on 3 July 2009. The draft waste Bill is due to come before the Assembly in January 2010, and to be formally in place by June 2010. Therefore, the first contracts should be ready to be signed in late 2010. That is the current process, but we would be happy to follow up with the details in writing.

190. Mr Beggs: You have indicated that the legislation would be in place for contracts to be signed, but surely it has to be in place and firmed-up in advance of that, so that the tenderers can have the certainty that the contents will be enacted as presented. Ultimately, that would give them a level of confidence in tendering, because they would know under what rules they would be operating. Does the legislation not need to be in place well before the signing stage?

191. Mr Denis McMahon: Ideally, it would be in place now. In fact, ideally, it would have been in place three months ago. The more confidence that we can give the market, the better, but it absolutely has to be in place at the time of signing the contracts. There has to be a level of belief from the tenderers that we are going to have it in place by the time the contracts are signed.

192. So far, we have had a strong response from the market, and they are fruitfully participating in the procurement process. We have been working very closely with the waste-management groups on this issue, particularly over the past six months, to make sure that everybody is clear about what is being done about the draft waste Bill, and when.

193. The Chairperson: Maybe it might be appropriate if one of the representatives of the waste groups comes forward. I do not want to bounce anybody if they do not want to come forward; I just want to hear what your views might be on that sequence of timing.

194. Mr E Molloy: Thank you, Chair. We would be perfectly satisfied if that timetable is adhered to. As Denis said, it is crucial that the market has confidence, and in an ideal world, the legislation would already be in place. However, the fact that we can confidently engage with the market, knowing that the legislation is going to be in place, gives us a sufficient safeguard.

195. Mr Beggs: Presumably, you will be going through some form of select list — a shortlist — at least, that is the way in which other large contracts are operated. At what point will you seek best and final tenders? Presumably, you would like this in place before you reach that final stage?

196. Mr E Molloy: Ideally, yes. The entire process is 18 months long, so —

197. The Chairperson: Can you just clarify what process?

198. Mr E Molloy: Sorry, the entire procurement process will take 18 months, so we will be engaged in a competitive dialogue. We will engage directly with the potential bidders. We need to be able to relay the details of the provisions of the Bill to them. By that stage, we will know the provisions of the legislation; after the consultation is completed by January 2010, when the Bill is presented to the Assembly.

199. As long as we have that information, we can be confident in our engagement with the market, and that should engender sufficient confidence in the market.

200. The Chairperson: Is the process that you spoke about the 18-month one that starts at the end of next year?

201. Mr E Molloy: We are engaged in the process.

202. The Chairperson: Are you happy for the timetable that has been outlined to be adhered to?

203. Mr E Molloy: Realistically, if that timetable is adhered to, we should all be able to proceed with confidence.

204. The Chairperson: Mr McMahon, will you outline the details of that in writing?

205. Ladies and gentlemen, thank you for your time. This evidence session has proven useful in distilling the issues and thus sorting out a timetable.

3 December 2009

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 Adrian McQuillan  
Mr Alastair Ross

Witnesses:

Ms Julie Broadway  
Ms Marie Cochrane  
Ms Janet Cooper  
Ms Brenda Mooney

Department of the Environment

206. The Chairperson (Mrs D Kelly): I welcome the officials who are from local government policy division in the Department of the Environment. We have Julie Broadway, grade 7; Brenda Mooney, acting grade 7; Janet Cooper, deputy principal, and Marie Cochrane, deputy principal. I invite you to make your presentation, which should take five to 10 minutes, and then take questions from members. I remind members that the Minister is due to attend the Committee at 11.00 am and will have to leave at 11.45 am. Therefore, it is important that we keep to time in this session.

207. Ms Julie Broadway (Department of the Environment): Thank you for the opportunity to brief the Committee on the draft local government (finance) Bill. I will introduce my colleagues and outline their interest in the Bill. Brenda Mooney and Janet Cooper work on finance policy in the Department's local government policy division, and Marie Cochrane and I are members of local government division's policy and legislation branch.

208. The main aim of the Bill is to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland. District councils in Northern Ireland are currently subject to departmental controls. For example, they need to get departmental approval before borrowing, and before applying capital receipts and sums to

capital or to renewal and repairs funds. The Bill will make provisions that relax some of those departmental controls, enabling district councils to manage their own financial affairs to best effect on behalf of ratepayers. It will align the framework for local government finance in Northern Ireland with the most appropriate modern finance practices elsewhere in the UK.

209. The Bill will introduce a prudential regime for capital finance that will enable councils to decide prudent and affordable levels of debt in line with guidance produced by the Chartered Institute of Public Finance and Accounting. It will introduce the power to invest; it will extend to all Departments the power to pay grants in relation to their areas of responsibility rather than that power being just for the Department of the Environment, and it will provide clarification around the general grant that is paid to councils. That grant consists of two separate elements, a derating element and a resources element, but that has caused some confusion in the past. Therefore, the general grant is to be replaced by two separate grants, a derating grant and a rates support grant.

210. The Bill will enable the Department to implement the recommendation of the councillors remuneration working group that an independent remuneration committee should be set up to consider the system of allowances payable to councillors and also the level of allowances payable. In addition, the Bill consolidates, into one enactment, all the provisions dealing with payments to councillors.

211. We last briefed the Committee on the draft Bill in April 2009 after the Executive had agreed to the policy proposals and the drafting of the Bill. On 24 July 2009, a consultation document, which included a copy of the draft Bill, was issued, and the closing date for replies was 31 October. We received 28 replies, including a number of replies that were received after the closing date. Those replies included 10 from councils, one from a change manager representing three councils, four from joint committees of councils, two from political parties, two from local government organisations, two from professional bodies, one from a trade union, one from a government Department, and five others. A synopsis of the replies has been provided to the Committee, but that synopsis does not include a reply from one council. However, the response of that council largely mirrored the comments of the Association of Local Government Finance Officers, the Northern Ireland Local Government Association (NILGA) and the other councils. We will update the synopsis to include that council.

212. The majority of respondents welcomed the Bill and the Department's proposals to modernise the current legislation on finance and councillors' remuneration. In particular, councils and local government organisations welcomed the greater freedom for councils to manage their own financial affairs without having to obtain consent from the Department. However, there was some concern that that freedom would be restrained by regulations. A number of respondents asked for more information about the proposed regulations, for example, in relation to the accounting practices to be followed, controlled reserves, use of capital receipts, and allowing borrowing limits to be set for national economic reasons.

213. The Department will, as required by clause 43 of the Bill, hold consultations on the proposed regulations and guidance, and it will advise the Committee in advance of those consultations. Before the Bill reaches Committee Stage, we will prepare a memorandum of delegated powers to set out in more detail what will be included in the regulations.

214. Respondents sought further clarification in a number of areas, for example, whether certain costs would be included in determining an affordable borrowing limit. Clause 1 of the Bill will require each council to designate a chief financial officer. The majority of respondents to that provision asked for clarification of the qualifications that would be required for a chief financial officer and stated that the roles of chief executive and chief financial officer should be separate.

215. With regard to the Department's proposal to replace the general grant with two grants, the derating grant and the rates support grant, 12 respondents asked whether consideration would be given to carrying out a review of the statutory formula. The main concern was whether that formula would still be appropriate for councils following re-organisation. Some respondents also expressed concerns that the rates support grant could be calculated as nil. I stress that there is no change in policy here. This is simply a name change. It is a matter of replacing the two elements of the current general grant with two separate grants. The formula is exactly the same. At the moment, the resources element of the general grant can currently be calculated as nil.

216. The introduction of a power to enable any Department to pay other grants to councils rather than the current system, in which only DOE can make such grants, was also generally welcomed, and the proposals with regard to payments to councillors was received well by the majority of respondents. The proposed establishment of an independent remuneration panel to advise the Department on a scheme of allowances and levels of allowances was another area with which respondents agreed. We are looking at the responses and will be seeking the Minister's views on whether the Bill requires amendment as a result of the consultation. We will then prepare the Department's response to the points raised in the consultation, and that will be sent to the Committee in due course. The aim is to have the Bill introduced to the Assembly in January.

217. The Chairperson: Thank you very much. I remind members who, like me, are members of local councils that interests must be declared.

218. Mr Beggs: I am a member of Carrickfergus Borough Council.

219. Mr Dallat: I am a member of Coleraine Borough Council.

220. Mr McQuillan: I am a member of Coleraine Borough Council.

221. Mr Ford: I am a member of Antrim Borough Council.

222. Mr Kinahan: I am a member of Antrim Borough Council.

223. The Chairperson: I am a member of Craigavon Borough Council. So, there are not many of us who do not serve on local councils.

224. The Bill was to have been before the Committee in December, so there is already slippage on the time frame.

225. Ms Broadway: There is only a couple of weeks' slippage; we still aim to have the Bill introduced to the Assembly in January, in accordance with our timescale.

226. Mr McQuillan: May I ask about the independent assessors panel? The cost of setting that up may outweigh the benefits it brings. Who decides how this is set up? How do you decide who sits on it?

227. Ms Broadway: Are you asking about the independent remuneration panel?

228. Mr McQuillan: Yes.

229. Ms Broadway: A few years ago, a councillors' remunerations group was formed to make recommendations. One of its recommendations was that there should be an independent remuneration panel for the following reason: the Department sets councillors' remuneration, and

there was some concern from local government umbrella groups that independence was lacking, and that an independent panel was needed to consider not only the types of allowances that should be paid, but the level of those allowances. We plan to use the public appointments system to appoint people to the committee.

230. Ms Marie Cochrane (Department of the Environment): The estimate was that it would cost under £50,000 per annum.

231. Mr McQuillan: Is that sum smaller than the cost of the present system?

232. Ms Broadway: At present, the Department sets the levels, but the issue of independence remains.

233. Mr McQuillan: Therefore, we could end up with another quango costing the taxpayer £150,000.

234. Ms Broadway: It would be an ad hoc committee, and it would only be brought into being when we wanted the review to happen.

235. The Chairperson: Would that be yearly?

236. Ms Broadway: No. I imagine that it would be every few years, and the committee would only exist for the duration of the review.

237. Mr Boylan: Does the draft Bill contain anything in respect of co-options? I keep asking that question, but nobody listens to me. There may be concerns about having time to dilute the contents of the PricewaterhouseCoopers report. Do you foresee any issues arising in relation to the Bill? The main issue is the transfer of reserves and control of reserves to local councils. There may be some concern about that. Would there be crossover problems, if you consider the proposal for municipal banks to allow borrowing on the strength of assets to complete a council project or to organise a function?

238. Ms Broadway: I do not think so. The Bill would apply no matter how many councils there are, because it is really to do with updating the current financial arrangements for councils, and, at the minute, the financial arrangements go back to the early 1970s.

239. Mr Boylan: Will it impact on the reserves or how councils use their reserves?

240. Ms Brenda Mooney (Department of the Environment): My understanding is that it will give councils more control over their finances. It is good practice. A framework will be put in place, and if councils act within that framework, it will give them more control over their finances. I could get you a firmer response on that.

241. The Chairperson: I would be grateful for that.

242. Mr Dallat: As this is about giving greater control to councils, is there not a concern about controlled reserves? I am not terribly sincere in asking that question, because I am conscious that in the past, councils put money in funny banks and lost it all. Why is clause 7 there?

243. Ms Broadway: Some concerns were raised about the fact that regulations could be seen to be diluting the greater control that was given. We will carry out a full consultation on the regulations when those are developed, and there will be more detail when we come to that stage. I know that that does not answer your question.

244. The Chairperson: Your paper states that some councils that responded to clause 7 asked for further guidance from the Department.

245. Ms Broadway: That is correct. In considering the responses, we will determine whether we need to amend that provision, or, when we are determining the regulations and guidance, we will decide what we need to produce.

246. The Chairperson: It would be useful to have a heads-up on the Department's thinking on the matter.

247. Mr Beggs: What effect will the designation of the chief financial officer have on the current situation? At present, the chief executive carries out the function of accounting officer. Do you see that function being split, or will we be paying for two people in the future to have those levels of responsibility?

248. Ms Broadway: The majority of people who responded to the consultation suggested that that role should be split. One of the policy development panels is currently considering, from the governance perspective, whether the roles should be split. The panel still has work to do, but when we bring more detail on the responses to the Committee we will be able to explain the panel's view, its reasons for that view, and why it thinks that the roles should be split.

249. The Chairperson: Will it be akin to an internal audit?

250. Ms Broadway: Yes; it is really internal financial control.

251. The Chairperson: So, it is whether or not the role should be with the chief executive.

252. Ms Broadway: Yes. It is whether one person should have both roles.

253. The Chairperson: Is it a question of whether they can audit themselves?

254. Ms Broadway: Yes.

255. Mr Beggs: My question goes back to the issue of councils' ability to borrow money. They must have approval from the Department for borrowing in excess of £1 million. If I understand the legislation correctly, flexibility would be given to councils so that they would not have to seek permission provided that they are working within the regulations. If there is no regulation, is there a danger of councils going bust? Has that been the experience elsewhere?

256. Ms Broadway: There is a provision whereby the Department can step in if it appears that a council has been borrowing more than it is able to service, and there is another provision that allows the Department to set in regulations what the specified level of borrowing should be for a particular council for the following year.

257. The Chairperson: There are no further comments. Thank you for your presentation. We will hear more from you early in the new year.

10 June 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Patsy McGlone (Deputy Chairperson)

Mr Roy Beggs  
Mr John Dallat  
Mr Danny Kinahan  
Mr Ian McCrea  
Mr Patsy McGlone  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Mr Karl Beattie  
Ms Jennifer McCay     Department of the Environment  
Mr Denis McMahan  
Mr Donald Starritt  
Mr Ricky Burnett     Arc21  
Mr John Quinn

258. The Chairperson (Mr Boylan): I refer members to the departmental briefing on the Waste and Contaminated Land (Amendment) Bill. I remind members that they asked the Examiner of Statutory Rules to comment on the delegated powers in the Bill. His response has been tabled for members' information. In it, he indicated that the level of Assembly scrutiny assigned to the regulation-making powers in the Bill seems to be appropriate. However, he feels that the order-making powers in schedule 1 should be subject to draft affirmative procedure. That information will be added to the Bill master file, and a summary will be incorporated into the clause-by-clause analysis table.

259. Departmental officials will now brief the Committee on the Waste and Contaminated Land (Amendment) Bill. I welcome Mr Denis McMahan, the director of the climate and waste division, and Mr Donald Starritt, Mr Karl Beattie and Ms Jennifer McCay from the environmental policy division.

260. Mr Denis McMahan (Department of the Environment): Thank you for affording us the opportunity to speak about the proposed Bill. You mentioned the overview, the importance of which is worth mentioning. We are making efforts to move waste management up the waste hierarchy, moving away from landfill towards recycling and preventing waste in the first place. In doing so, there is a danger that more and more waste is managed in ways that may be illegal and are not compatible with good environmental practice. Addressing those concerns is a key part of the programme that we are trying to put in place.

261. I will not talk in detail about clauses. Suffice to say that some of them speak for themselves on subjects such as fixed penalties and the retention of seized properties. If you wish, Chairperson, we are happy to talk through each clause. Would you like my colleagues to say a few words about each one in turn, after which you may ask questions?

262. The Chairperson: Please go through the clauses, after which I will open the floor to members for questions.

263. Ms Jennifer McCay (Department of the Environment): I shall address clauses 1 to 4. The main reason for including clause 1, "Fixed penalty notices for offences under Article 4", is to allow for the more proportionate and cost-effective enforcement of illegal waste offences. The Waste and Contaminated Land (Northern Ireland) Order 1997 already allows fixed penalties to



be issued for various offences. Clause 1 merely extends their use to offences under article 4, which covers the:

"unauthorised or harmful deposit, treatment or disposal, etc., of waste"

264. At present, however, under article 4 of the 1997 Order, there is no alternative to prosecution through the courts for any of those offences. Prosecutions can be time consuming and costly, and could be considered disproportionate for the smaller scale offences. We believe that the use of fixed penalties is more appropriate and cost effective.

265. There are a few main points to note about the details of clause 1. The Department and councils can issue fixed penalties under this legislation. That is in the interest of harmonising the powers of those bodies, which we will deal with throughout the Bill. Given that clause 1 is intended to tackle less serious waste offences, we anticipate that councils will make most use of the powers in the Bill. Individual councils will have complete discretion in the use of the powers; they will always have the option of prosecuting any particular offence through the courts, as well as the option not to use fixed penalties at all if they do not think that they are appropriate.

266. The Bill sets the amount of a fixed penalty at between £100 and £200. Councils can offer a discount to encourage early payment, which will allow for discretion over the amount of the fine. Councils can retain the receipts from any fixed-penalty notices.

267. Mr Beggs: I declare an interest as a Carrickfergus councillor.

268. Mr Weir: I declare an interest as a North Down councillor.

269. Mr I McCrea: I declare an interest as a Cookstown councillor.

270. Mr Dallat: Is it appropriate to reward people who have been disposing of waste illegally by giving them discounts? Given the past history of councils and the huge variation in how they conduct themselves in relation to the law at present, is there not a danger that that will be replicated, in that some will do it and others will not? How do you define a less serious instance of illegal dumping?

271. Mr Donald Starritt (Department of the Environment): Although clause 1 introduces the option of a fixed penalty, it is entirely up to councils whether they choose to go down that route or opt for prosecution. That decision will hinge on whether the offence is viewed as a serious one or a repeat offence. It is entirely up to councils whether to offer a discount on the fixed penalty. In the past, generally, some councils felt that offering a discount made it easier to bring in the money in the first place. The decision to levy the whole amount, or, indeed, not to levy a fixed penalty at all and go for a more serious prosecution, is for councils to make. That will vary from council to council.

272. Mr Dallat: Even in this economic depression, £100 is not a lot of money. Surely there is an incentive for people to do whatever they like, because being caught a few times will be a lot less costly than going through the proper channels to dispose of waste in the proper way?

273. Mr Starritt: The feeling was that prosecutions were not being brought because offences were deemed too minor. It is also possible that the Department did not have the resources to bring prosecutions in every instance. We believe that it will be the same for councils; it will be a resource issue. We are giving them an extra tool or an extra option.

274. Mr McMahon: You have made a key point. The wording in the Bill means that councils will be relied upon to take those decisions. That, to some extent, runs through the Bill. It is reasonable to ask how well the powers in the Bill will work. That depends on the ability and willingness of councils to operate it. That is a very valid question. As it is worded, however, it very much relies on the ability of the councils to use it effectively as another tool in their armoury over and above those that they have already.

275. Ms J McCay: You mentioned inconsistency of approach. Given that the powers are discretionary, which we think is appropriate, we are reluctant to impose a uniform framework. We have imposed upper and lower limits to try to ensure that inconsistency does not occur too much. If councils feel that that is becoming a problem, they could decide to work together, perhaps through the Northern Ireland Local Government Association (NILGA), to ensure that that does not happen. Some councils could decide to not issue fixed penalties at all because they feel that it is inappropriate to be too prescriptive.

276. The Chairperson: For clarification, the powers are discretionary, so it is up to councils to —

277. Ms J McCay: Within the limits.

278. The Chairperson: Obviously, there are set limits and guidelines because we do not want a situation in which one council area charges a certain amount and others not charging for the same act.

279. Mr Beggs: I concur with the view that this is enabling legislation. Councils can take the decision of whether to give a discount. Certainly, I am aware that a number of other fixed penalty notices encourage early settlements. I am open to that as a useful mechanism.

280. The upper limit is set at a maximum of £200. How did you come to that figure, particularly if councils wanted to offer some sort of discount? The legislation may need to state that there is a maximum fine of £100, or else the full court system will be brought to bear. How did you pick that as a maximum figure and how easy would it be to change that in the future if, for instance, there was a period of inflation and that became not as significant a sum? What is the process for changing, and do we need a built-in process to enable agreed change?

281. Mr Starritt: In respect of how we arrived at the amount, we were looking at a step up from a litter offence. The fixed penalty for litter is £50. We felt that we needed to step it up a bit from that. However, given that it is a fixed penalty, we felt that the amount should not be too high. Obviously, we are happy to look at any other proposals for the range. The reason for setting the range from £100 to £200 was, to pick up on the point that the Chairperson made, to ensure that there was not too much inconsistency across local government.

282. As regards the future changing of the amounts, the Order provides for it to be done by subordinate legislation. Changes could be made to deal with inflationary changes in the future.

283. Mr Beggs: That is fine.

284. Mr Weir: The cap of £200 is a little bit low. We need to increase that a little bit to £300 or £400. Obviously, there is discretion as to whether councils use the power. I presume that there is also discretion, therefore, in individual cases, so that if they are regarded as being not particularly serious in relation to a fixed penalty but are regarded as being above the threshold, there can be a prosecution. The big problem with any deterrent is the extent to which it is ultimately enforced because anybody who looks to dump will make a decision about whether they are likely to get caught. It is not a question of somebody dumping and taking a £100 fine;

they could do it not in the knowledge of getting a particular fine, but in the knowledge of getting a fixed penalty or being taken to court, so there is a degree of deterrent.

285. In respect of the language that we use, perhaps it is about looking at the issue differently. Instead of talking about a penalty and a discount, we could talk about a penalty if the person pays it within a certain time and an enhanced penalty if they fail to pay. That is the way in which a fixed penalty works. Any of us who have been given a parking ticket will know that if it is paid within a certain period of time, it is a certain rate, and, if that is not paid, the rate goes up. That is the nature of fixed penalties. It may just be that the word "discount" is the wrong word to use.

286. Mr Beggs: My understanding is that fixed penalties are £60, but, if people pay them early, they have to pay only £30. It is not an enhanced payment. People are hit with a big payment, and if they pay —

287. Mr Weir: The point that I am making, Roy, is that, presumably, we can use whatever language we want. It is a question of inverting the mind and looking at the matter in a different way. The norm is that the penalty increases if it is not paid within a certain period. Therefore, it is a question of the language that we want to use. I understand people's feeling resentment if they see the word "discount". However, it is not a discount; it is less of a penalty. It is not the same as people looking for a bargain in the January sales.

288. Ms J McCay: It is important to make the point that we recommend that councils do not issue fixed penalties unless they are prepared to take the person to court and they have the evidence to do so. Otherwise, the whole system will be undermined.

289. The Chairperson: It is important to get matters right with enforcement.

290. Mr Dallat: I am not sure whether the Department has asked councils how many millions of pounds they spend every year on recovering waste. I suspect that the area that I live in is no different to other places, in that parts of the rural environment have been absolutely destroyed. The farmers have shown most energy by picking up bottles and so on from their fields. Many roads that are used by those who launder diesel and so forth have a lot of litter.

291. We could, for example, consider a fine of £100 or £200 with a discount and relate that to the problem, or we could even take a wee trip over on the ferry, drive down through Scotland and contrast how the environment is treated there with how it is treated here. I do not want to deride the legislation in any way or the work that has been put into it — I have no problem with that. However, those fines are like the opposite of using a sledgehammer to crack a nut, because they are not even beginning to tackle the problem.

292. Mr Starritt: We are happy to look at any increase in the fixed penalty amount. However, we do not see clause 1 as being relevant to the more serious offences, because those should go to court.

293. The Chairperson: The fine should fit the crime.

294. Mr Dallat: Leaving it to the discretion of the councils and not monitoring what they do or not asking them to provide statistics on how many fixed penalties they issue makes the whole matter not relevant. Everyone knows in their heart of hearts that if Joe Bloggs who lives down the road is caught, he will go to his local council, have a yarn with the people there and be given the easiest option. That is what has happened in the past.

295. The Chairperson: That shows the need for the legislation, Mr Dallat. The scale in ordinary littering and serious offences is quite broad, and we definitely need to look at that.

296. I do not think that there are any other points to discuss before we move on to discuss clauses 2, 3 and 4.

297. Ms J McCay: Clause 2 concerns detention of seized property, and that refers mostly to seized vehicles. It builds on the existing powers that are available to departmental enforcement officers. At the moment, they have powers to seize vehicles, without any warning or a warrant in certain circumstances, that are suspected of being involved in illegal waste activity. We sought legal advice on the extent of those powers in existing primary legislation. We were advised that the existing legislation would not permit what I will term extended retention. That means that a vehicle can be seized but has to be returned to its owner quite quickly once the necessary forensic and other investigations have been carried out. The Environment Agency's enforcement officers made representation for stronger powers to allow them to detain vehicles in some cases. I will outline the situations in which we perceive those powers being most useful.

298. In some cases, the Environment Agency's officers would like to retain the vehicles until the date of the relevant court case. The reason is to allow them to continue to gather evidence and stop those returned vehicles being used in waste crimes in other places. Therefore, a deterrent factor would probably be likely to be created. The Department's powers under the Bill are not unlimited. Clause 2 empowers its enforcement officers to retain a vehicle and seize property for a limited period. Once that time is up, the Department would have to apply to a magistrate for permission to retain the property in question for a further period, and a case for doing so would have to be made. In that case, the vehicle's owner would have to be given the chance to make a case to have their vehicle returned.

299. From a human rights perspective, we recognise that those powers are quite significant, which is why we introduced the magisterial independence element to the decision-making process. It is also important to note that the powers are not intended to tackle small misdemeanours. Vehicles would be retained only in suspected serious waste crime cases, and guidance to that effect would be produced for enforcement officers conducting such operations.

300. The Chairperson: Councils currently put an order on cars that have been abandoned on housing estates instructing the owner to have it removed, either by themselves or by someone else. Does that cut across clause 2, which applies only to waste offences? Abandoned cars are also a problem, but councils currently have powers to deal with them.

301. Mr Starritt: The Pollution Control and Local Government (Northern Ireland) Order 1978 provides powers to deal with abandoned vehicles.

302. Mr Kinahan: That is also addressed in the draft Clean Neighbourhoods and Environment Bill.

303. The Chairperson: Yes.

304. Mr B Wilson: I strongly support clause 2, because we need a suitable deterrent. I am concerned about what happens if the Department applies to retain a vehicle beyond a prescribed period. What is meant by a prescribed period?

305. Ms J McCay: That will not be in this legislation. We will have to introduce subordinate legislation that will include regulations governing how we deal with seized property. The Department would not be allowed to wait months before going before a magistrate. At present, we are thinking about a period of a possible 14 days, but we have not fully decided. Those regulations will be subject to a full public consultation and a human rights assessment, which the

Committee would be involved in. Therefore, the prescribed period will not be in the powers in this Bill, which will introduce primary powers.

306. Mr B Wilson: Is 14 days a suitable deterrent? Are you saying that, unless the Department makes a strong case, the vehicle will be returned after 14 days?

307. Ms J McCay: The Department would have to present its case to a magistrate, and the vehicle owner would have the right to go before the magistrate. Ultimately, it would be for the Department to make the strongest case that it can, and it would be for the magistrate to decide in any given set of circumstances.

308. The Chairperson: If there are no further comments on that clause, we will move to clause 3.

309. Ms J McCay: Clause 3 deals with the offence of failing to pay charges for the subsistence of a licence, and it relates to the licensing of waste management facilities. As you know, the Department's system requires waste management facility operators to be licensed by the Northern Ireland Environment Agency. As well as paying the licence fee, all licensees must pay an annual subsistence fee to cover agency expenses, such as those for inspections of the facilities, which must be carried out to check that they are operating safely and within the terms of their licence.

310. The existing sanction for non-payment of subsistence fees is set out in article 15(6) of the Waste and Contaminated Land (Northern Ireland) Order 1997, which empowers the Department to revoke a licence if those subsistence fees are not paid. The problem with that is that, even if the Department revokes the licence, it continues to incur costs, because staff must continue to inspect those sites to check that they are not presenting risks to the environment.

311. Therefore, clause 3 is an attempt to encourage both compliance and the payment of subsistence fees by making non-payment a criminal offence. It would introduce a penalty for the offence, with a further, daily penalty for continued non-payment. It is hoped that the threat of court action will encourage payment of the fees without having to issue proceedings, but the threat to do so will remain. The maximum fine for non-payment will be level 5 on the standard scale, which is £5,000. Any additional fine would not exceed one tenth of level 5 for each day on which the offence continues to be committed. That could seem to be quite high, but the cost of the licences and the subsistence fees can run to thousands of pounds. Therefore, we thought that the fine had to be proportionate to the offence.

312. Mr Dallat: Believe you me, a fine of £5,000 for someone who has not paid for their licence is chicken feed compared with the millions of pounds that they make. One such person, who I will not name here again, was the subject of 46 complaints. Indeed, people from Belfast came down to try to persuade that person to put their house in order. Such activity is liquid gold to people who are in the business. The fact that legislation has to be devised to get people to pay for the licence is shocking in itself, but at the same time, there is a worry that the fine should not be too high. Again, I do not wish to criticise the Bill, but the proposal totally underestimates what is going on. I cannot believe that some people who are lucky enough to get a licence that allows them to make millions do not pay for it. I am lost that legislation needs to be written to compel those people to pay and that fines of only £5,000 are being suggested.

313. Mr Starritt: It is important to note that clause 3 deals with waste management licence facilities that, in the past, have applied for and successfully obtained a licence. A couple of the Bill's later clauses deal with the power to prosecute for serious offences, to which more serious fines and custodial sentences apply. Clause 3 is a response to a bookkeeping problem in that the Environment Agency is incurring costs in inspecting sites but is not able to recover the cost of

the licence. The Bill gives councils the power to prosecute if illegal waste activity is going on, and we will talk about that later. The Department already has the power to take illegal operators to court, and significant fines are available. We will discuss that when we come to discuss clause 5.

314. Ms J McCay: Clause 4 proposes powers to require the removal of waste that has been unlawfully deposited. The clause looks quite complicated, but it simply replaces and changes articles 28 and 28A of the 1997 Order. Article 28 of the 1997 Order gave powers to councils to require occupiers of land to tackle illegal waste on their land. In certain circumstances where an occupier refused to do that, council officials could enter the land and remove the waste or take remedial action to recover costs from the occupier. The Waste (Amendment) (Northern Ireland) Order 2007 extended those powers so that councils could require similar action from landowners in circumstances where, for example, there was no occupier or where an occupier refused to take action.

315. Clause 4 builds on those powers in two main ways. First, it gives the Department the same powers that were granted to councils under articles 28 and 28A. We have talked about fixed penalties, and Donald will talk about that when we come to discuss clause 5. The provision is in the interests of harmonising throughout the Bill the powers to tackle waste offences between the councils and the Department and giving the same broad enforcement powers to both parties. It legislates for a partnership approach in tackling illegal waste activity.

316. Secondly, clause 4 will enable a notice to be served on a person who is believed to have illegally deposited waste, rather than on only the landowner or the occupier. That makes more sense in cases where the enforcing authority, whether that is the Department or the council, is confident that it knows who is responsible. The enforcing authority is currently unable to issue a notice on the person who has illegally deposited waste, and the Bill changes that.

317. Mr Kinahan: As a councillor, I was always concerned about those times that we could not identify who owned a piece of land and who was responsible for it, because that was always the land on which people dumped everything. Can the Bill include provision for councils to clear land even if they cannot establish who owns it or who is responsible for it? This will all work nicely as long as the council knows who owns the land. However, if the council does not know, there is still a problem. Is there any way of writing the Bill that so that, if a council cannot establish who owns the land, it has the power to go on to it?

318. Mr Starritt: My understanding of that clause is that councils have the power to go on to land to clean up waste and to take remedial action. The difficulty is with the recovery of the costs that are incurred in taking such action. However, the power to carry out a clean-up exists already. We are trying to maximise the chances of councils' being reimbursed by enabling them to go after the landowner, the occupier or the offender, if they can be traced after an inspection of the waste.

319. Mr Kinahan: Do you see my point, though? Councils often hold back because of the insurance and legal elements of the issue, and certain areas can become sites for illegal dumping from that point on.

320. Mr I McCrea: My point is on the same issue. I know that councils have held back on removing waste, because they find it difficult to get reimbursed. There is an ongoing debate about who is responsible for the removal of waste. Councils believe that it is the Department's responsibility, whereas the Department says that it is councils' responsibility. I have been writing to the Minister to get some clarity on the issue. One piece of legislation says that it is the Department's responsibility, and another part of the same legislation says that it is the district council's responsibility. The problem is that it can sometimes cost a council more than £100,000 to clear waste from land, and if nobody owns that land, the council has no one from whom it can

seek reimbursement. I know about the case of an alcoholic who knew nothing about the waste that had been dumped on his land.

321. Mr Weir: Was that waste empty bottles?

322. Mr I McCrea: I wish that it had been only bottles.

323. That is the difficulty. He had no knowledge of all the stuff that had been dumped on his property, because he never went out of his house, yet the council was supposed to be going after him. Councils should go after the people who actually dump the waste. However, the biggest difficulty is in proving the identity of such people.

324. Mr McMahon: There are two issues in that. First, the fact that the clause allows the Department to go after the offender rather than the landowner will help it to address the problem of recovering costs. Secondly, I agree that we need to sort out the issue of responsibility. On foot of this legislation, we will have to put in place an agreed protocol between local government and the Department that makes it clear that both will have crossover powers in those circumstances. It is important that there be a clear protocol to ensure that we know who is doing what and when and that cases do not fall through the gap between the Department and local government. We will have to work on that, but we will come back to it.

325. Mr I McCrea: It is important that that be done in the early stages. At present, the system is as clear as mud, and the buck is being passed back and forth between the Department and councils. That must be dealt with at the earliest opportunity. If it is not, the situation will continue and nothing will be done.

326. Mr McMahon: I agree.

327. The Chairperson: Following on from that point, clear guidelines must come out of the legislation. As a ratepayer, I know that Armagh City and District Council has had to clear waste on many occasions. Ratepayers do not really understand that councils do that until it happens. I have written to various Ministers seeking reimbursement for councils that have had to take care of such problems. It is important that councils be given guidelines and that they then let the ratepayers know exactly what those guidelines are all about.

328. Mr Starritt: Clause 5 covers councils' powers to enforce articles 4 and 5 of the 1997 Order. As Jennifer said, those articles deal with the illegal deposit and treatment of waste and with the duty of care to apply due diligence in waste management. Under articles 4 and 5 of the 1997 Order, the Department has the powers to investigate and prosecute, and those powers are used for serious waste offences. Clause 5 will extend those powers to councils. Therefore, as Denis said, councils and the Department will have exactly the same powers. We have recognised that clause 5 will give everybody those powers, but we need a protocol to establish what the councils and the Department will do. The protocol will be important in establishing the cut-off point so that it is clear to the public who does what.

329. The Chairperson: Clause 5 is one of the important clauses of the Bill. Councils will have to have the necessary resources, regardless of whether they are required for the full cost of recovery or something else. Enforcement is the key part of all this. You are saying that clause 5 sets out clear guidelines as to how that will be achieved.

330. Mr Starritt: It is possibly worth saying that, although the articles in question are in the 1997 Order, they were updated three years ago by the Waste (Amendment) (Northern Ireland) Order 2007. One thing that that Order did was to increase the level of fines and custodial sentences. I think that I am right in saying that the Bill will provide for an unlimited fine and up to five years'

imprisonment for serious offences. Those are the maximum fines, and those powers, which are with the Department now, will be extended to councils.

331. The Chairperson: How will the gap in NIEA's work with local councils be closed? That will be important with these provisions.

332. Mr Starritt: That is correct. The fly-tipping protocol that we are talking about is an attempt to close that gap and to make sure that there is no limbo between what councils do and what the Department deals with. The protocol will be important. We intended not to commence these clauses until the protocol was in place, because to do otherwise would merely add to the confusion.

333. Mr Weir: You mentioned the extension of power, particularly in cases in which there is an unlimited fine or a five-year imprisonment. Since the transfer of justice powers, have there been discussions with your colleagues in the Department of Justice? There are concerns that it is often the case that somebody is pursued, taken to court and, after a lot of work, found guilty. However, the individual might receive what in many ways is regarded as a slap on the wrists. I am sure that that is frustrating for you as well. There is a feeling that the courts do not take some environmental crimes seriously and that that is reflected in the sanctions. From your point of view, or, in this case, from the council's point of view, there is not a lack of willingness to take action, but the problem is the result when the councils impose sanctions. Is there any intention to have discussions with Department of Justice officials to see whether anything can be done, by way of guidelines or proactive action, to ensure that sanctions can be ratcheted up?

334. Mr Starritt: From discussions that we have had with our colleagues in the NIEA, we know that they feel that the punishments handed out did not fit the crime. However, there is a feeling that, as with more recent cases, the issue is being viewed more seriously and that sentences are higher than they were.

335. Mr McMahon: We must take into account that there may be a whole range of associated problems. Whenever you get one form of criminality, you very often get a number of others. We need to tackle all those matters in a focused way so that we can identify offenders who commit a number of crimes.

336. Mr Kinahan: My point links to the protocol that you talked about. Who ends up getting the money if the council is not getting anything when you fine people? That money drips away, and the councils are not getting anything from it.

337. Mr Starritt: The courts have powers to award the council or the Department any costs that the agency or the council incur in an investigation and in any clean-up that is needed.

338. Mr Weir: There is a case that my council has been involved with that Brian and I know fairly well. It does not relate to contaminated land; it is on the notorious issue of the enforcement of the legislation on smoking. I understand that the courts have the power to award the clean-up cost, but there is also the recovery of legal costs to consider. If the defendant gets legal aid, the Department or the council could be left with a reasonable level of costs. Normal practice is that if someone receives legal aid, the opposing side's costs do not get awarded against them. Therefore, you could be left with a situation in which the council or the Department is left with a legal bill that it cannot recover.

339. I do not know whether that can be looked into. As I said, in North Down Borough Council we had a very unfortunate experience of a case on the enforcement of the smoking ban, and the person involved saw himself as a smoking campaigner and, therefore, saw himself as having been deliberately provoked. I do not think that, in saying that, I am saying anything



controversial, because the person would say that himself. He took legal aid, but the council had no other option but to continue with the prosecution, and the case ended up costing ratepayers over £10,000. Therefore, that is an example of such an issue.

340. Mr Dallat: Denis, I would like to encourage you to say a bit more than I think that you were going to say. It is not just individuals who commit crime; it is now real, big business. It involves money laundering, revamped paramilitaries, gangsters operating on a big scale and corruption that, I think, is probably unlimited. It also involves an increasing amount of the Police Service's time. Is this legislation adequate to deal with that, or is more legislation coming?

341. Mr McMahon: The point that I was trying to make is that it is about more than just the legislation. We need to ensure that the agency and the Department of Justice are working closely together, and we need to make sure that we are managing all this with a risk-based approach. If people are committing a range of offences involving not just waste but other areas, that all needs to be taken into account. I was trying to say that the Bill is just one part of an armoury of tools that can be used to address those issues. Therefore, as we talked about earlier, if some of the clauses are seen in isolation, they may not capture the full breadth of what it is possible to do within the legislative programme. However, although the legislation is an important element, there must be close working between NIEA, councils and other enforcement agencies to get the best out of this and other legislation.

342. Mr Dallat: That is most helpful. It is important that we understand that there is a bigger picture and that the issue will have to be confronted sooner rather than later. It is not just about the problems that are being created; the people who are involved in waste disposal and so on have become the victims of all kinds of tricks, and sometimes the wrong people are going to court. It is a vicious problem, and I just hope that the Environment Agency fully appreciates that it is now taking responsibility for an issue that is as big a one as we may ever have to face, given the money that can be available to those who do not dispose of waste correctly.

343. The Chairperson: Following on from your point, Donald, co-operation between the Department, Land Registry and the councils is key to getting everything right; there is no point in putting it on paper unless people understand it. Illegal dumping is a serious issue, particularly in my own area; it is ridiculous the amount of money that people have to pay. We now move on to consider clause 6.

344. Mr Starritt: Clause 6 deals with the right of entry with heavy equipment or to domestic premises. At present, when enforcement officers investigate allegations of illegal activity, they are required to give 24 hours' notice before they can enter residential premises or bring heavy machinery onto premises. The feedback that the Department has received from officers is that sometimes after 24 hours' notice has been given, there is nothing to investigate when they arrive; clause 6 will remove the requirement to give notice. However, the safeguarding mechanism in the form of a court warrant, which officials will need to obtain from a court before entering premises, remains. Those powers will be available to both the Department and the councils.

345. The Chairperson: Such powers seem to be common sense. The owners of dumps that have operated for some years now find it more difficult to obtain licences because of the new EU regulations. Indeed, some have had to close as a result. Have all the issues on identified sites been sorted out, or will the Bill address them? I am aware of things mysteriously being moved from sites overnight before investigators gained access.

346. Mr McMahon: In compliance with EU regulations, some sites will close, and the Department is working with councils on sites that will require additional work to ensure compliance. That will happen more and more, because, as we move towards more recycling and preventing waste in

the first place, there is a danger that illegal dumping will increase or that waste will be dealt with inappropriately. That is why it is important to get it right.

347. The Chairperson: OK. We will move on to clause 7.

348. Mr Beattie: Clauses 7 to 9 relate to part 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997. Clause 7 has two separate but related components: first, the removal of underground strata above the saturation zone from the definition of "contaminated land" in the Order; and the addition of a test of significance to the pollution of waterways and underground strata.

349. To understand the effect of those provisions it may be helpful to consider the provision in article 49 of the 1997 Order. Contaminated land is defined in that Order as:

"any land which appears to a district council in whose district it is situated to be in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) pollution of waterways or underground strata is being, or is likely to be, caused".

350. In order to determine whether land is contaminated, a district council must first establish that a pollutant linkage exists, and that must consist of a contaminant, a pathway and a receptor. Receptors can include people, livestock, domestic animals, ecosystems, surface water, ground water, and even buildings.

351. Removing the underground strata above the saturation zone from the definition of contaminated land in no way reduces the environmental protection afforded by the legislation; rather, it corrects an anomaly in the 1997 Order, which, in effect, categorised the underground strata above the saturation zone as a receptor rather than a pathway.

352. Pollution of ground water, which is essentially underground strata within the saturation zone and which is quite properly regarded as a receptor, would still be covered. Pollution in transit through the unsaturated zone would be covered in cases where it would be likely to reach the ground water, where significant harm was being caused or where there was a significant possibility of such harm being caused to other receptors.

353. As a by-product of that amendment, there will be a clarification of the demarcation of responsibilities between district councils and the Department, because the current provisions could create a situation in which both regulators could be regarded as being responsible for dealing with pollution in that area.

354. The addition of a test of significance to the pollution of waterways and underground strata adds consistency to the regime, allows a similar approach to be taken to all types of contamination and enhances the workability of the regime. The current definition of contaminated land means that pollution on the surface must be significant for there to be any possibility of the land being regarded as contaminated in the legal sense. However, any pollution below the surface, however minor, would be sufficient to satisfy the definition of contaminated land. The costs associated with applying the regime under those provisions could be prohibitive for both regulator and regulated alike.

355. Clause 8 provides for a single appellate body to hear appeals against remediation notices, where they have been issued by a district council or the Department. The existing legislation has appeals against notices issued by district councils heard by a court of summary jurisdiction, while the Planning Appeals Commission (PAC) hears appeals against notices issued by the Department. In the interests of consistency, the Department feels that a single appellate body would be appropriate and that the PAC should assume that role.

356. The capacity of the PAC to deal with the additional case load has been raised; however, the number of cases is likely to be extremely small. For example, in the first five years of the equivalent regime in England and Wales being in operation only four notices were appealed.

357. The Chairperson: Another job for the PAC. We will take your word for it that there will be minimal appeals.

358. Mr Dallat: How much will it cost to submit an appeal?

359. Mr Beattie: There are no provisions in the legislation to charge for submitting an appeal to the PAC.

360. Mr Beggs: If there is no charge, might offenders abuse the system by pulling in the PAC to buy time? It can take two years for PAC decisions to be made, so is there potential for abuse of the system by people who want more time?

361. Mr Beattie: The experience in GB has not shown that to be a problem. As I said, in the five years in which it has been in operation in England and Wales only four appeals have been made.

362. The Chairperson: Could the Committee look at that?

363. Mr Beattie: Yes, certainly.

364. Clause 9 seeks to update article 70 of the 1997 Order to take account of the fact that although the Industrial Pollution Control (Northern Ireland) Order 1997 remains in operation, many of its provisions have been superseded by the introduction of the Pollution, Prevention and Control Regulations (Northern Ireland) 2003.

365. As it was always intended that the contaminated land regime would deal primarily with historic land contamination for which appropriate regulatory controls were not in place, it is appropriate that that exclusion be put in place rather than replace existing control measures.

366. To clarify the meaning of the clause, the preclusion of the part 3 regime applies only where contamination is the result of the final disposal of controlled waste; it also means that enforcement action can be taken under regulations 24 and 26 of the Pollution, Prevention and Control Regulations (Northern Ireland) 2003. It in no way dilutes the existing provisions; it merely updates them in light of the legislative changes since the 1997 Order was introduced.

367. Mr Dallat: Is there a timescale for final disposals? I know places where material has been in final disposal for the past 30 years but has never actually gone anywhere.

368. Mr McMahon: We will have to consider that issue. It is a fair point; I know of a few instances of material sitting out.

369. Mr Starritt: Clause 10, "Producer responsibility obligation regulations", makes minor changes to the Producer Responsibility Obligations (Northern Ireland) Order 1998, which gives

the Department powers to require producers to take certain actions to increase reuse, recovery or recycling.

370. It refers to powers of entry and inspection. However, we have been advised that the powers of entry and inspection are not defined in the Order and, for the sake of completeness, they should be. It is a technical amendment. We have referred to the powers of entry and inspection that are defined in the 1997 Order and made a link to that Order to clarify what the Department can do. It does not change the Department's powers; it merely clarifies the position.

371. Clause 11 covers minor and consequential amendments and appeals. We have discussed the meat of the Bill.

372. Mr McMahon: We are happy to take any views on board, and we will come back to the Committee on the points on which we have been unable to give a full answer.

373. The Chairperson: Thank you.

374. We move to a briefing from Arc21 on the Waste and Contaminated Land (Amendment) Bill. I welcome Ricky Burnett, policy and operations manager, and John Quinn, director.

375. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council.

376. The Chairperson: We have gone through the Bill clause by clause. Gentlemen, you have five to ten minutes to make a presentation, after which members will ask questions.

377. Mr John Quinn (Arc21): I am here to support my colleague Ricky, who has co-ordinated the response on behalf of Arc21 and comes from a regulatory background in Northern Ireland and Scotland. He is more amenable to today's discussion.

378. Mr Ricky Burnett (Arc21): Thank you, John, and thank you, Chairman and Committee members. There are three main elements to our response. We support the move to give duplication of powers to councils and to the Department as a matter of principle; indeed, we supported that some time ago. As members will be aware, councils undertook that function until 2003 when it transferred to the Department.

379. At that time, councils suggested that duplication of powers made more sense than transferring them to one organisation, given the scale of the problem at that time. Therefore, the principle sits comfortably with Arc21 and Arc21 councils. That said, as you heard from the Department, the key is deciding the demarcation lines between councils and the Department on who does what and when. It is important that that be decided before the Bill is enacted. If the Bill is enacted before agreement can be reached, it will make the situation worse because there will be more confusion and obfuscation of responsibility.

380. I am sure that members will be aware, and they will hear from other witnesses, that there have been discussions between the Local Government Association and the NIEA, which is the body responsible, to devise agreement on those lines; so far, however, that has not been possible. Indeed, I understand that the gap in the demarcation lines between the Local Government Association and the Department is quite big. That is not unusual. There is a similar situation in Scotland, England and Wales where there is duplication. Indeed, in England, a protocol was agreed in March 2005. It sets a line with which, as I understand it, the Local Government Association is relatively comfortable but with which the NIEA is not. Its line is much higher, and it does not want to come down. I am sure that the NIEA will come before the

Committee, so I will let it explain its position, but resources are at the core of it. Demarcation and the protocol are vital to moving forward.

381. The second main thrust in our response is resources, and that is looking at the quantum of the problem and ensuring that there is an effective and efficient policing regime that involves everybody. The third thrust of our response is to ensure that duplication of complete powers — the tools in the box given in the Bill, if you like — is as equal with councils as it is with the Department. However, I am not sure that the Bill ensures that, particularly clause 5, which provides for the power to serve notice on someone requiring the submission of transfer notes. That is an important tool and investigatory box for officers; however, it is not exclusive to that, as powers of seizure and the power to enter premises also come into it. It is important that there is parity of powers. If you have duplication of powers, parity of tools seems rational. There is no point in giving an organisation powers only to tie one hand behind its back. Those are the three elements of our response.

382. The Chairperson: Thank you very much for your presentation. Will you comment on fixed penalties? Defining responsibility clearly is vital as is better co-operation and setting out guidelines from the start. Resources are a major issue. Should the fines that councils impose be set in stone? Given the amount of illegal dumping, will councils have the powers and the enforcement sections to impose fines?

383. Mr Burnett: Fixed penalties have a role in enforcement; however, they should not be seen as a panacea, as they have flaws. For instance, there are difficulties for councils administering the Litter Act 1983. Fixed penalties are not a panacea, but they have a role to play, and it is right and proper that they are an available option for minor transgressions.

384. However fixed penalties are no longer an option for significant or repeated transgressions by individuals; in such cases it is better to pursue court action. There should be guidance for practitioners that sets out in detail when certain penalties should be applied. The fines in the Bill are sensible. It is important to be able to decide when to apply the fixed penalty and when to take the more serious action of going to court.

385. Councils need those powers. It is not unknown for unscrupulous operators, as has happened in England, to know how councils operate. They will dump in one area and pay the fixed penalty because they know that their actions will be treated as a single event. There needs to be a network of intelligence among councils, the policing agencies and the NIEA to combat those who work the system to their advantage.

386. The Chairperson: Are the enforcement powers sufficient? That will be a key element.

387. Mr Burnett: The powers are sufficient; who applies them and how is important. I cannot underestimate the value of having a protocol in the agreement. The template for that is the one in England and Wales. If an organisation wants to move away from it, it must provide evidence for doing so. Resources should not be the basis of that evidence. It is about deciding on the most appropriate organisation to deal with the incident, not who has the resources. Resources should be dealt with separately.

388. Mr Dallat: You talked about penalties. If I get four fixed penalties for speeding, I am off the road. How do we decide when someone has received enough serious fixed penalties to put them inside for a while?

389. Mr Burnett: That is a valid question. The way to deal with that should be included in the guidance. It also means that there will be consistency of approach throughout Northern Ireland; no area will adopt a slightly different approach from another. People will know that that is the

case at present and will use it. Guidance will assure consistency of approach throughout Northern Ireland by NIEA and the councils.

390. Mr Dallat: I live in the Coleraine District Council area, within half a mile of Ballymoney and Magherafelt, and I can see problems where someone wants to exploit differences between councils. If Magherafelt takes a soft approach, an individual can go half a mile away and dump waste in Coleraine or Ballymoney. That goes back to the point about uniformity. Do we need better guidance so that all council areas are the same and one area does not become a happy dumping ground?

391. You heard the discussion about whether the proposed penalties reflect the cost of recovering waste or the damage that it is doing to the environment. A person can be fined £100 for dropping a cigarette butt.

392. Mr Burnett: First, we must differentiate between littering and fly-tipping. The English protocol defines anything less than one bag of material as litter and anything more than that as fly-tipping. It is right and proper that the penalty for fly-tipping is seen to be bigger than the penalty for litter. A penalty of the magnitude that is contained in the Bill sends out that signal. The maximum penalty for the worst cases could be an unlimited fine and up to five years' imprisonment.

393. There is quite a spectrum between a fixed-penalty notice and a prison term. The application is important.

394. Mr Beggs: You mentioned the importance of intelligence gathering, particularly if fixed-penalty notices are used. I can see some advantages of that being an efficient method for smaller transgressions. However, does the intelligence gathering in the model used elsewhere include fixed-penalty notices so that someone does not regularly abuse the system to make money and to establish whether there is a wider picture of regular infringements by individuals? Such information could tie in with new vehicle operator licences that are being introduced. If that information was being fed through, and someone cannot even operate an HGV vehicle, that could have a major impact. Who gathers the intelligence and how is the information collated?

395. Mr Burnett: A mechanism needs to be devised for all policing agencies to feed into. The main matter of discussion among those agencies is where it sits. The ability of policing agencies to access the system is more important than who deals with it. Having an accessible system is the important point. The application of penalties is the important issue. At the moment, certainly at the lower level, there is no effective deterrent for fly-tipping.

396. Mr Beggs: You mentioned the gap between local government and NIEA in where the protocol should sit and who should be responsible for what. Can you give an example of where responsibility was applied outside local government elsewhere? Is NIEA suggesting that that level should apply to councils?

397. Mr Burnett: I am happy to give an example with the caveat that I am not directly involved with the latter end of the discussions between NIEA and the Local Government Association, which, I am sure, could confirm the figures. My understanding is that the English protocol, which is the one that local government will suggest using, states that councils should deal with anything less than 20 cubic metres, and the Environment Agency would deal with any amount over that. The protocol also contains an ability to set local agreements, and that happens. We have a slightly different local agreement. The NIEA mentions 20,000 cubic metres; that is a significant gap.

398. The protocol in England was developed over many years. A great deal of discussion, debate and energy went into it, and it seems to me to be a very good starting point. Let those who want to deviate from that protocol provide evidence for wanting to do so, although resources should not be a pertinent element of that evidence. The main point is who the most appropriate agency is and who is best designed to deal with it in those particular cases. England and Wales have been through the process. Unless there is a good local reason, why reinvent the wheel?

399. The Chairperson: Mr McCrea mentioned a problem about landowner liability.

400. Mr Burnett: To some extent, that extends to the application aspect. Some members of Arc21 were a wee bit concerned that unwitting landowners are left with large bills through no fault of their own. There are checks and balances in the Bill that may help to address that, but there was a concern that landowners would be left with big bills.

401. The next stage is that, once the regulators — the policing agencies — can agree on the lines of demarcation, the landowners become involved because they have a part to play in developing the protocol on who does what.

402. That is a stage that can only happen when the policing agencies have agreed. There is no point involving landowners unless the policing agencies agree on how to take that forward. That is what happened in England and Scotland; the major landowners became involved in a forum to speak and debate. Some of the information that came out of that forum is in the protocols.

403. The Chairperson: Thank you very much, gentlemen.

16 September 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Roy Beggs  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Mr Joe Campbell	Association of Local Government Finance Officers
Mr Robert Dowey	
Councillor Sean McPeake	Northern Ireland Local Government Association
Councillor Evelyn Robinson	
Ms Brona Slevin	

404. The Chairperson (Mr Boylan): We will now receive a presentation from representatives from the Northern Ireland Local Government Association (NILGA) and the Association of Local Government Finance Officers (ALGFO). I welcome Councillor Evelyn Robinson, NILGA president elect; Councillor Sean McPeake, NILGA vice president; Robert Dowey from Newry and Mourne District Council; Brona Slevin from Craigavon Borough Council; and Joe Campbell from Derry City

Council. It is a joint presentation, so whoever wants to start off can do so. Because it is a joint presentation, I will allow 10 to 15 minutes and will then open it up to questions. Thank you very much.

405. Councillor Evelyn Robinson (Northern Ireland Local Government Association): Thank you very much. I am Councillor Evelyn Robinson, and I understand from what is written here that I am the NILGA president elect. I am also a DUP councillor in Ballymoney. Thank you very much for having us here this morning; we are happy to be here to answer all of your questions. With me this morning are Councillor Sean McPeake, who is the NILGA vice president; Mr Joe Campbell, the chair of the Association of Local Government Finance Officers; Ms Brona Slevin; and Mr Robert Dowey.

406. Committee members have a copy of NILGA's written submission, and we do not propose to go over that in detail. However, there are two issues we wish to highlight. I will highlight the first issue on behalf of NILGA and Mr McPeake will highlight the second one. After that, we will hand over to our finance officer colleagues who will take the rest of the presentation. The first issue concerns the proposed local government (reorganisation) Bill and the associated new governance framework for councillors. As you know, the aim of the Local Government (Finance) Bill is, in part, to modernise the current legislative framework relating to local government finance. NILGA members broadly welcome the proposals but consider that they should not be taken in isolation from proposals that will be contained in the local government (reorganisation) Bill. That Bill will also provide more modern powers for district councils.

407. When the finance Bill was first introduced, local government was moving towards the 11-council model as part of the local government reform. The Executive decided that that will not now happen in May 2011. The legislation to support that change to 11 councils is to be included as part of the local government (reorganisation) Bill. That is also delayed, pending the decision on the timing of the reform programme.

408. The reorganisation Bill, however, also contained other proposals that are not dependent on the 11-council model. I refer specifically to provisions to introduce a new governance framework for councils. NILGA members are strongly of the view that a new governance framework needs to be in place to complement the provisions in the finance Bill. Illustrating that point, clause 1(2) of the finance Bill requires a council to designate an officer of the council as its chief financial officer. Given the complexity of the local government accounting framework, NILGA members consider that, in line with the Chartered Institute of Public Finance and Accountancy (CIPFA) guidance, legislation should require the designation of a chief financial officer and the separation of the chief executive and chief financial officer roles.

409. Of course, all of that will be included in the reorganisation Bill. This supports the policy developed under the reform programme by policy development panel A, and is likely to form part of the new governance framework. Those provisions should not change the position of the chief executive as the accounting officer, they merely relate to improved governance arrangements through the segregation of duties.

410. We understand that, subject to Executive agreement, it is anticipated that consultation on the reorganisation Bill will commence in the autumn. We urge Committee members to do whatever they can to expedite that, so that an appropriate governance framework will be in place for councils to support the provisions of the Local Government (Finance) Bill.

411. Councillor Sean McPeake (Northern Ireland Local Government Association): I will address the social-clause element in the Local Government (Finance) Bill. From our written response to the consultation, the Committee will see that we recommended the inclusion of social clauses in public procurement contracts. The Committee will know that social clauses are requirements in



public procurement contracts that stipulate that they should provide adequate social value — for example, a contract that will lead to new employment and ensure the employment of people from the local community who are long-term unemployed. The Committee will also know that the Executive have already committed to using government procurement to further their social objectives in the Programme for Government.

412. We understand that the Department proposes to create an Order, using the powers available in the Local Government (Best Value) Act (Northern Ireland) 2002, that will enable councils to include social clauses in their procurement contracts to the extent that they are necessary or expedient to achieve best value. The Department has indicated that, due to the legislative time frames, it will be some time before those will be implemented. However, NILGA strongly urges that that work should be completed as soon as possible, particularly given the backdrop of the current economic climate.

413. Mr J Campbell (Association of Local Government Finance Officers): I want to begin by thanking the Chairman and members of the Committee for the Environment for inviting the Association of Local Government Finance Officers to give oral evidence today. We are pleased to form a joint deputation with NILGA. At the outset, I want to reiterate the fact that we welcome the introduction of the Local Government (Finance) Bill and the opportunity to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland.

414. The proposed legislation, particularly its provisions on the capital finance system, aims to give greater financial freedom to Northern Ireland local authorities, and we urge that that greater freedom will not be constrained through the use of regulations. We are pleased that the Department has indicated that there will be consultation on any subordinate legislation. We also feel that there should be adequate legislative provision to support important new initiatives and models for service delivery in the future and urge for that to be clarified as soon as possible. That provision would include powers to participate in public-private partnerships (PPPs), public finance initiatives (PFI) or local asset-backed vehicles, and it is envisaged that those types of initiatives may be required for councils to put in place arrangements for service delivery models, such as waste management collaboration, and to effectively manage their assets.

415. We also support the point made by NILGA that a new governance framework needs to be put in place to complement the provisions in the Local Government (Finance) Bill. That is necessary given the complexity of the local government accounting framework and the need to be in line with the CIPFA guidance that legislation should require the designation of a chief financial officer — as the Bill does — and the separation of the chief executive and the chief financial officer roles.

416. Under clause 1(2), it is, therefore, noted and welcomed that the Department proposes to take forward the separation of the role of chief executive and chief financial officer in the forthcoming local government (reorganisation) Bill, although we ask where that Bill now sits, given the decision to defer the implementation of RPA.

417. ALGFO strongly supports that separation, particularly in the light of the responsibilities that the Bill places on a chief financial officer. That includes, under clause 4, submitting a report on the robustness of the estimates of a council, reporting to a council on the adequacy of financial reserves, which is clause 6, and reviewing a council's affordable borrowing limit, which is clause 13. Those are specific financial responsibilities, which should be the remit of a council's chief financial officer.

418. Good governance would indicate that that role should be separate from that of chief executive. The chief financial officer's role deals largely with financial accountability, and it does not impact on the chief executive, who remains the accountable officer for councils.

419. ALGFO supports NILGA's recommendation that the Local Government (Finance) Bill should include provision for the inclusion of social clauses in local government procurement along the lines proposed for central government procurement. The association provided a written submission, which contains a lot of our detailed comments on specific clauses. However, I want to highlight two clauses. Clause 7 provides for specified reserves to be designated as controlled reserves. In the spirit of greater financial freedom, no reserves should be designated by the Department as controlled reserves. That is the case in GB, and the same should apply in Northern Ireland.

420. We have Chief Local Government Auditor guidance on the level of reserves that should be held. That guidance is being implemented voluntarily by local government, and it stipulates that we must have a minimum of 5% of our district funds reserves. The objective that would be achieved by specifying reserves to be designated as controlled reserves can be achieved on that voluntary basis. There should be no designated controlled reserves at this stage.

421. Clause 27 concerns the rates support grant. Had RPA gone ahead, the association would have advocated that the formula for distributing the general grant resources, which is called the rates support grant in the Bill, be reviewed. In addition, the resources for the rates support grant should be ring-fenced. We accept the financial constraints that all Government Departments are under, but were disappointed by the 5% cut at the start of the 2010-11 financial year and the further 5.9% in-year cut at the end of July. Those cuts impact on only the poorest councils.

422. The association broadly welcomes the Bill, thanks the Committee for the opportunity to make a presentation and thanks members for listening.

423. The Chairperson: Thank you very much. Members, officials from the Department of the Environment (DOE) will brief the Committee on the local government auditor on 21 October 2010, when we will get a clearer line about controlled reserves.

424. Do all councils support the separation of the chief executive and the chief financial officer?

425. Mr J Campbell: The finance officers' association certainly supports that, and the Bill recommends that the roles should be separated. For members' information, three of the district councils currently have that separation in place. For example, I am the chief financial officer of Derry City Council as opposed to the chief executive. Likewise, in Belfast City Council and, more recently, in Craigavon Borough council there is separation. The relationship works very well. It is not about the chief executive being subordinate to the chief financial officer; it is about a good working relationship that leads to good governance. It is also a recommendation of CIPFA.

426. The Chairperson: Is the designation of that finance officer done at local government level?

427. Mr J Campbell: It is made at local government level. As I said, we have shared our response with the Society of Local Authority Chief Executives (SOLACE), which is aware of our position. Our response has also been shared with NILGA, the representatives of which will give their position on that today.

428. The Chairperson: In relation to the PPPs and PFIs, there is provision within the Local Government (Miscellaneous Provisions) Act 2010. Are you content with that, or are you asking whether that will be robust enough?

429. Mr J Campbell: I know that our in-house solicitor will always have concerns about something that is dealt with in a general way, because there is always the possibility of uncertainty when it comes to implementing or using the guidance or legislation. We are simply flagging up the view that local government needs to have as much financial flexibility as possible going forward, particularly in the areas of asset management and collaboration. We do not want to find that, when the time comes to do something, we do not have the legislative basis on which to do it. We are not saying that it is not there, we are just making sure that, as part of the passage of the Local Government (Finance) Bill, there are no gaps.

430. The Chairperson: I would like you to expand on controlled reserves. Perhaps you could comment on that, Joe. Social clauses have obviously worked elsewhere. Are you saying, Mr McPeake, that we have no time to include that in the legislation?

431. Councillor McPeake: That is the indication that we were getting, but we ask and encourage the Committee to endeavour to include it at the earliest opportunity because, given the economic situation that we are facing at the moment, with high levels of unemployment etc, we need that flexibility to be built in so that the long-term unemployed can be utilised in a way that benefits them and local government. I am not sure about the timetable for that.

432. The Chairperson: Will you expand a bit on the controlled resources, as, obviously, they are working elsewhere?

433. Mr J Campbell: To take the GB legislation, on which the Local Government (Finance) Bill is largely based, our understanding is that no council reserves in GB have been designated as controlled reserves. Last year, particularly with the run-up to the RPA that was working to a timetable of 2011, the councils voluntarily agreed that they would aim to keep their district fund reserve, which is the main council reserve, at 5% of their budget. That largely achieved their objective to set a controlled reserve. We have controlled reserves under the 1972 Act. If we want to borrow, we have to seek DOE consent. Likewise, if we want to apply funds from the capital fund, we must seek DOE consent. We argue that, in the spirit of greater financial freedom, which is the Bill's objective, controlled reserves are not necessary. There is sufficient provision in the Bill if something has to be done in particular situations.

434. The Chairperson: Before I open the meeting to questions, I welcome Mr Trevor Clarke back to this Committee.

435. Mr McGlone: Thank you, ladies and gentlemen, for your presentation. You will forgive me, Mr Campbell: my knowledge of councils' financial dealings will be far surpassed by yours. You mentioned financial freedom in having no reserves designated as controlled reserves. Will you boil that down to what that means in practice for the workability of a council and what that allows a council to do?

436. Mr J Campbell: It would mean a council having complete freedom to decide how its reserves — the capital fund, the repair and renewals, and any other reserves that it sets — should be applied in its own area. At the moment, those reserves, through the 1972 Act, are largely controlled, and councils must seek the consent of the DOE to apply them. Very rarely would a council seek consent to find that it would be denied. However, under the new legislation, councils would have more control over their finances and how they apply them to their local areas.

437. Mr McGlone: Could we work out the flip side, because we have had experiences here with expenditure, not all of them good? What about the reasoned control of that expenditure?

438. Mr J Campbell: Again, the Bill makes adequate provision for that.

439. Mr McGlone: I know that it will give the kick-in powers, after the event.

440. Mr J Campbell: My answer is that with greater freedom comes greater financial responsibility —

441. Mr McGlone: It goes back to people such as you.

442. Mr J Campbell: That is why the position of the chief financial officer is key. The chief financial officer will have to submit a report to the council on the robustness of the estimate. He or she will have to submit a report on the adequacy of the reserves. So, if there is an issue, the onus will be on that chief financial officer to flag that up and make the council fully aware of it. Likewise, if councils are overstretching in their borrowing, under clause 6 the chief financial officer will have to review the council's affordable borrowing limit and advise the council whether it is affordable.

443. Mr McGlone: I hear entirely what Councillor McPeake is saying about social clauses. We come from more or less the one area and know many of the same people. Do you concede that the social clause could wind up missing many of the short-term unemployed who would bring great skills to, say, the construction industry? I have no problem with endorsing the social clause in principle; the long-term bit sounds fine to me. However, it could miss out some of the really good workers who you and I know — neighbours and friends of ours, who are unemployed because of the crisis. I have no problem at a personal level with endorsing a social contract that deals with the unemployed full stop and takes advantage of that skill base.

444. Councillor McPeake: I entirely agree with you, Patsy. There has to be that flexibility built in, too. I suppose that the social clauses that are being rolled out by the Department are geared towards the long-term unemployed. However, you are right; it could be tweaked to allow flexibility. We do not want to hamstring ourselves with a threshold that the unemployed must cross to take advantage of that social contract. You are absolutely right to flag that up, and I hope that you take it on board. We would have no problem with that. I think that it would be a good idea.

445. The Chairperson: We will hand over to our resident expert in these matters, Mr Weir.

446. Mr Weir: Thank you, Mr Boylan, and thank you for the heavy use of sarcasm.

447. The Chairperson: Do not record that bit.

448. Mr Weir: I take on board what has been said in connection with this. I suppose that the only distinction between the short-term and the long-term unemployed is that there could be a danger of firms doing a bit of a fiddle. For instance, they could lay off staff on a Friday and rehire them a week later, claiming that they are recruiting a certain number of unemployed people for their businesses. Those issues need to be weighed up.

449. The Chairperson and Patsy have covered some of the points, to some extent. I suppose that a lot of the provisions relating to local government finances were drafted at a time when it looked as though the RPA was going ahead. If the RPA goes ahead at a later stage, there is one area in which I can see some role for controlled reserves. Some anxiety was expressed that, where a range of councils merge, and if there is no control on reserves or expenditure, there will be a race for a range of legacy projects. The idea would be that the councils would commit to big capital projects and the wider area would pick up the tab. Is there any provision outside the controlled reserves that would prevent that sort of thing happening at some stage?

450. Mr Robert Dowey (Northern Ireland Local Government Association): What councils do or commit themselves to when they are separate councils will have no impact on the Bill. That had been going on, to a degree, and that was one reason why the auditors recommended a 5% threshold. That threshold was to stop money being sifted out of reserves, particularly the general fund. If councils were to commit themselves to big projects, which some seem to have attempted to do prior to reorganisation, the issue would have to be politically thrashed out when the councils came together, because the contracts were still going to be there. The situation is slightly different when there is new legislation, because a new council or existing councils will have to take it on. Therefore it is difficult to envisage that happening.

451. Mr Weir: Perhaps I have a wee bit of cynicism. If people see something more concrete in a bigger picture, some councils will be tempted to spend or commit themselves heavily to capital knowing that the tab, to some extent, will be shared elsewhere. If we were to eliminate the clause on controlled reserves, for instance, would it be a question of simply saying that it should go completely? Should a milder provision be put in? If there was no reference to controlled reserves, for instance, could there be wording to the effect that the council would be required to take cognisance of any advice from the Chief Local Government Auditor? That would be a milder form of wording that could, potentially, alleviate worries without having the hands-tied quality of controlled reserves.

452. Mr J Campbell: That has happened already with the district fund reserve, which is councils' key revenue reserve. We have signed up voluntarily to 5%. That was largely based on the guidance from the Chief Local Government Auditor. No doubt, when it comes to reviewing the councils' affordable borrowing limit, the robustness of the estimate and the other provisions that protect the overall finances, the auditor will have his view on that. If the auditor thinks that councils are overstressing and taking on capital projects in the run-up to the review of public administration, I am sure that he will be quick to comment on that.

453. Mr Weir: On a different topic, I understand where you are coming from as regards the general grant. However, do you think that it is realistic to say that the general grant should be ring-fenced? Without getting into a political argument, the broad financial situation is one in which an avalanche is coming over the hill from Westminster. Presumably, that will mean that very little within government will be protected through ring-fencing. I understand the desire to defend the general grant, because its removal would have a direct impact on ratepayers and taxpayers. However, do you think that it is realistic to argue that it should be ring-fenced?

454. Mr J Campbell: First and foremost, we fully appreciate the severe constraints that public finances are under. Indeed, the situation will get worse. We recognise the economic climate that we are all in. The resources grant was ring-fenced for many years. It was kept at a certain level, and councils that were in receipt of general grant resources could, at least, plan within their estimates. Our concern, as finance officers in the local government sector, is the large degree of uncertainty. We were advised fairly late last year that it would be cut by 5%, and we have had a further 5.9% cut in year. We are all starting to prepare our estimates for 2011-12, but we do not know what the financial resources will be for next year.

455. Although everything has to be looked at, the general grant resources are targeted at the councils that have the greatest need; the grant does not apply to all councils. Targeting the grant effectively impacts upon councils that have already been recognised as needing the general grant resources in order to keep their rates at a certain level.

456. Mr Weir: It may be useful if you could supply us with a paper rather than giving a verbal answer. You said, understandably, that, if the general grant is to continue into the future, the formula needs to be reviewed. Everyone accepts that any formula needs to be reviewed from time to time. You may not be making a judgement that the current formula is wrong, but are

there elements of the formula that you think are wrong? If you have specific ideas in that regard, it may be useful for you to supply those to the Committee.

457. Mr J Campbell: I would not go as far as to say that the formula is wrong. However, we recognise that the general grant resources, which will be called the rate support grant in the new Finance Bill, are based on expenditure and a number of other factors, such as targeting social need, the influx of population and sparsity. We are saying that, had the RPA gone ahead and led to a lot more functions being transferring from central government to councils, the formula would have had to be reviewed. We are not saying that there is anything wrong with the formula necessarily, but a time when significant change was being made to local government would have been an appropriate time to carry out a review.

458. Mr W Clarke: Thanks very much for your contribution. I want clarification on social clauses in procurement. At present, councils can build social clauses into major contracts. I declare an interest as a member of Down District Council. We managed to build social clauses into the contracts for our new administration centre. It might relate to one long-term unemployed worker for the period of the contract rather than many. Do you want it to be compulsory to build in social clauses, whether they relate to the long-term unemployed or apprenticeships?

459. I am very much in favour of that. On the point that was made about short-term and long-term unemployment, I am strongly of the view that such measures have to be used to tackle long-term unemployment, particularly in areas of deprivation and areas of neighbourhood renewal, where there is a stigma attached to unemployment and health damage to people who are long-term unemployed. I speak as someone who was long-term unemployed during the late-1980s, so I know at first hand how difficult it is to get a job after having been unemployed for a long time. We need to focus the measures.

460. As Mr Weir said, the system could be manipulated, and firms could lay people off two months before their contract has been announced and then bring them back on. Social clauses improve the situation if you bring in that provision for the long-term unemployed, because people are more likely to take the people in the neighbourhood than to bring them from outside. Under European law, firms could bring unemployed people from Poland to do the contract, but they are less likely to do that if the social clause includes a provision for the long-term unemployed; they are more likely to take people from their neighbourhood. Will you clarify that please?

461. Councillor McPeake: Personally, I was unaware that Down District Council had availed itself of that provision. I would be interested to hear how it did that, because it was NILGA's understanding that that power was not available to local government. I have heard of instances in Derry for example, where that provision has been built in to some of the projects that the Department is doing there, such as the new bridge. We would like to see that provision made compulsory.

462. I take the point that Mr Weir made, that the system could perhaps be open to manipulation, but there are ways around that. There would have to be a certain cut-off date, so that someone could not be made redundant one week and employed the next. There are bound to be ways of putting in a threshold. The principle should be established that those who are unemployed need to be looked after and to be able to avail themselves of employment opportunities in local government projects. That is the general point that I will make at this stage. It is up to the Committee to tease out the possibilities around that. I would be interested to hear later about your experiences in Down. That is the first that we in NILGA have heard of it.

463. Mr B Wilson: Thank you for your presentation. Will you clarify something? I am concerned about the relationship between a chief executive, who remains the accounting officer, and the chief finance officer. Who is responsible for finance in the end? What is the relationship there?

464. Mr J Campbell: Clearly, the chief executive is the accountable officer for a council. There is no getting away from that. We advocate — in line with CIPFA guidance — that for good governance, and particularly because of the specific financial responsibilities in the Bill, the chief financial officer's responsibilities should be separate from the responsibilities of the chief executive. That is not to say that the chief executive is not responsible for finance. The chief executive is responsible for finance, just like everything else, but from a good governance point of view, particularly given the statements that I have already outlined that the chief financial officer has to make to council in accordance with the Bill, we are saying that the chief financial officer role should be separate from the chief executive role. Within local government, as I have already outlined, that separation has already taken place in three councils. It works very well and does not cause any difficulty at all.

465. Mr B Wilson: Is there no danger of conflict between the two people?

466. Mr J Campbell: No, there should not be. If there were conflict, it would have to be for a very good governance reasons.

467. Mr B Wilson: I refer to the proposed ring-fencing of the rates support grant. Like Mr Weir, I feel that that is wishful thinking. Virtually every Department and body is under exactly the same financial pressures. You said, for example, that your budget had to be changed twice during the year. A lot of councils will have to do that, because new cuts are being made all the time. I support the idea of ring-fencing the rates support grant, but, given that the Health Department's budget cannot be ring-fenced, it is difficult to justify that proposal.

468. Mr J Campbell: I will come in on that question and so will Robert. The rates support grant is based on the wealth in councils and is given to those with the least wealth. Consider the most extreme case: if the council that usually gets the most money — I do not have the figures to hand — does not get that, it may have to increase its rates by 10%, 15% or possibly even 20%. That is our point. At the end of the day, that money has effectively always been ring-fenced in the past. We accept, however, that the financial climate has changed significantly in the past year or two and will get worse. Nevertheless, the alternative — to remove or reduce the grant — would mean that councils could not raise it on the rate, because, the rate base is too low to raise it, or to raise it on the rate would put an unacceptably high burden on local ratepayers, which would then put those ratepayers at a disadvantage in comparison with other ratepayers in Northern Ireland. That is the key point.

469. Ms Brona Slevin (Northern Ireland Local Government Association): Joe explained the numbers: of the 26 councils, 19 receive the grant at differing levels. The issue is about the disproportionate effect on the ratepayer if there are dramatic reductions in the general grant. Joe also mentioned the amount of planning involved. In-year cuts are very hard to deal with, as members can appreciate, as they raise the rates well in advance of the current year. Therefore, given what we have already said, if there are plans to cut the grant, it would be helpful if that could be planned well in advance, so that we could build that into the process.

470. Mr Dowey: I will give members a clear example of how divisive this issue is. The proposals will not impact North Down Borough Council, because it does not get any of that money. However, it will affect councils in west of the Province, such as those in Dungannon, Strabane and Derry. I am from Newry, and the council there gets some money — it is not critical, but it is important. The situation can be likened to that of the benefits system: if benefits were reduced, it would make no difference to people who are employed.

471. The Chairperson: If you have any more information that you would like to furnish the Committee with, we would appreciate that.

472. Mr McGlone: Mr Campbell, you mentioned the distinctiveness of the two roles — the chief executive and chief finance officer — and how the separation of those has worked well. How long has that been working for?

473. Mr J Campbell: In Belfast and Derry City Councils, that has been working since 1972. The roles were separated when the 1972 Act was drawn up. Therefore, it has been working for almost 30 years.

474. Mr McGlone: Was Craigavon the other example given?

475. Ms Slevin: An interim chief executive has been in post for the past two and a half years, and I have been acting as the chief financial officer during that time. I have to say that that has worked extremely well. It definitely improves corporate governance.

476. Mr McGlone: Perhaps that is not the best example. However, it is good to hear that the other one has been working since 1972. Thank you.

477. Mr Beggs: It appears, from what you are telling us, that separation of the role of chief financial officer and chief executive works reasonably well in some of the largest councils, such as Belfast and Craigavon. However, what would the cost implication be for a council such as Moyle to create a second role with increased financial responsibility? Is there a problem implementing that model with some of our very small councils?

478. Mr J Campbell: That is a good question, because the Bill was based very much on the 11-council model. We are not now dealing with that model, but the finance Bill will still go ahead and apply to the 26 councils. NILGA suggested that it may need further consideration, particularly for the smaller councils.

479. Mr Beggs: Would a joint working arrangement be a way around that? It needs to be thought through so that everyone understands what they will be going into.

480. Mr J Campbell: With RPA deferred, I do not know the status of the local government (reorganisation) Bill. I would have thought that consideration of joint working would have been part of the progression of that Bill. It will be that Bill that will give consideration to the roles being separated, and we need to look at that in more detail.

481. Mr Beggs: Is there anything in local government legislation to stop an individual being given a title in two councils so that they could carry out the function across a number of councils?

482. Mr J Campbell: That is possible through collaboration. The intention is that councils should collaborate much more closely in the next few years. Governance models on collaboration have been looked at, and that could be considered as part of that.

483. Mr Beggs: A written submission from NILGA indicates that it wants changes to the treatment of creditors and liabilities. You argue that trade creditors with that right should be excluded from the definition of a credit arrangement. I have a limited knowledge of accountancy, but I would have thought that a creditor was a creditor. Why do you want a different definition? I am lost. Will you explain?



484. Mr J Campbell: The submission reflects all the views received from the association. That point relates to short-term as opposed to long-term creditors. We all have short-term creditors. We buy materials and supplies and pay for them within 30 days. Therefore, when it comes to an affordable borrowing limit, that normal credit period of up to 30 days for trade creditors should not be included in the affordable borrowing limit.

485. Mr Beggs: What happens in individual or private accounting principles?

486. Mr J Campbell: A clear distinction is made in private sector finances between short-term and long-term credit. The affordable borrowing limit has clearly been targeted at long-term borrowings.

487. Mr Beggs: With regard to long-term liabilities, you indicate that you want to change the way that the aftercare costs of landfill sites are treated. I have some concern about that. Presumably a significant amount of money needs to be set aside to ensure that a council-owned landfill site can be closed up properly, and, if that money is earmarked against other aspects, it may not be there to do the job for which it was designed, so why do you want the treatment changed?

488. Mr J Campbell: All that we are doing there is to try to clarify and make sure that the distinctions are made. There will be a need for landfill aftercare costs for evermore, and councils will have to discharge those responsibilities. That will be catered for as a separate provision, because councils must account for that expenditure in their accounts. Similar to arrangements for trade creditors, that expenditure should be set aside when it comes to working out the affordable borrowing limit. If it were taken into account over a 25-year period, it would be very significant. However, it will have been provided for already on a year-to-year basis in the rates estimates as a separate provision. It is a matter of making a distinction. We are not saying that there is no liability; we are saying that that liability should be treated slightly differently, but it will form part of the overall council's liability.

489. Mr Buchanan: My question has been touched on by Mr Beggs. Surely we do not need a separate chief finance officer for each of the 26 councils? Through collaboration, and from your experience, are you confident that one chief finance officer for two or three councils could operate?

490. Mr J Campbell: That would be very difficult under this Bill. Every council is responsible for its own finances. Every council will have to make a declaration on the robustness of its estimates, on its affordable borrowing limit and on the state of its reserves. Therefore, it would be very difficult to ask someone from one council to make that statement on behalf of another council. I think that it needs to be done at the 26-council level. The issue raised earlier was that, although that separation and the new Local Government (Finance) Bill is largely geared to the new 11-council model that would have made all the councils bigger, I accept that there is a point with regard to how it might work in the smaller councils.

491. Mr Dowey: I think that we are missing one point. I have an analogy. The hospital trusts are headed up by a chief executive. There may be a few exceptions, but most of those chief executives are general managers: they are not doctors. Therefore, if you want someone to give you an opinion on some serious illness, you will go to the specialist in the hospital. For example, if there is something wrong with your brain, you will ask the brain surgeon; you will not go to the chief executive and tell him to make sure that the brain surgeon carries out the operation. The only person who can say whether it is possible to operate is the specialist.

492. With regard to the Bill, the specialist on finance would need to be a qualified accountant, although there are one or two exceptions where chief executives are also qualified accountants.

The CIPFA recommendation that you will hear more about at a later stage makes it clear that the chief finance officer should be a qualified member of one of the six registered bodies in the UK and Ireland. That is why the chief finance officer, or whoever is signing off the accounts and saying that the reserves and the estimates are adequate, needs to have a specialist finance background. In fairness, most of that specialist knowledge is in the councils: it is only a re-designation. We are not talking about creating two jobs at the same level in each council. We are talking about the separation of duties where person A says that the estimates are robust. Political connotations could conflict with conservatism among accountants, and there may be some debate about that. However, it is a separation of roles and re-designation of existing roles in most cases. I suggest that there are probably as many as 17 qualified accountants in the 26 councils, although I do not know for sure. However, in most of the bigger councils the people are there and it would involve re-designation.

493. The Chairperson: It is important to ensure value for money for the ratepayer. I take your points on board.

494. To recap, a question was asked about the issue of social clauses in the reorganisation Bill. The Chief Local Government Auditor is coming to the Committee with DOE officials on 21 October. Representatives from CIPFA will also come in the next couple of weeks.

495. If you can furnish us with any other information we would appreciate you sending it on to the Committee. Thank you for your presentation, and I wish you well in your year. All the best.

23 September 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Patsy McGlone (Deputy Chairperson)

Mr Roy Beggs

Mr Thomas Buchanan

Mr Trevor Clarke

Mr Willie Clarke

Mr John Dallat

Mr Danny Kinahan

Mr Peter Weir

Mr Brian Wilson

Witnesses:

Mr David Nicholl Chartered Institute of Public Finance and Accountancy NI

496. The Chairperson (Mr Boylan): We move now to a briefing from the Chartered Institute of Public Finance and Accountancy NI (CIPFA) on the Local Government Finance Bill. Members have been provided with a submission to the Department's consultation in their papers. I welcome David Nicholl, head of CIPFA NI.

497. After a five- or 10-minute presentation, I will open the meeting to members' questions.

498. Mr David Nicholl (Chartered Institute of Public Finance and Accountancy NI): I am the chief executive of CIPFA Northern Ireland. I thank the Committee for the kind invitation to come here today and give evidence in relation to this important legislation.

499. As many of you know, CIPFA Northern Ireland has worked with the Department of the Environment, local government audit and local government finance officers for the last 15 years or so to bring local government accounting in Northern Ireland from what some have described as the dark ages right up to it being on a par with the very best practice in England, Scotland and Wales.

500. Northern Ireland is now incorporated fully into the code of practice for local authority accounting in the UK. The Department of the Environment (DOE), local government audit and the Association of Local Government Finance Officers all have personnel who sit on key standards and regulatory committees, such as the CIPFA Local Authority (Scotland) Accounts Advisory Committee (LASAAC), and play a key role in setting standards. Northern Ireland is right at the heart of things.

501. CIPFA Northern Ireland leads the way in certain aspects. CIPFA Northern Ireland, along with its colleagues, developed the automated cash flow statement tool kit and a pro forma set of accounts to create a claim, and those have been exported to England, Scotland and Wales. There is tremendous kudos and recognition that Northern Ireland is the leader in certain aspects.

502. That is the accounting side, but the legislative framework within which we operate is seriously lagging behind. That is why we indicated in our response that we welcome the Bill as a general catch up. The one part of the draft Bill with which CIPFA has an issue is Clause 1(2), which requires that:

"A council shall designate an officer of the council as its chief financial officer."

503. Why is CIPFA concerned? First of all, the Bill, in effect, will retain the existing poor practice whereby a council that is charged with handling ratepayers' money may actually not have a qualified accountant anywhere on its books; it may not have a qualified head of finance; it may not have anyone with financial expertise on its senior management team; or, as at present, it may have a designated chief financial officer who does not have any of the required knowledge, skills or experience to do the job. In that regard, Northern Ireland is seriously out of kilter with actual and best practice in other parts of the United Kingdom.

504. You will be aware from our response that the legislation in England and Wales, namely the Local Government Act 1972, states at section 151 that:

"every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs."

505. That officer has to be a member of a professional accountancy body. Although the legislation in Scotland does not specify that the proper officer should be a qualified accountant, in practice, the vast majority of local authorities have a qualified accountant in the post of chief financial officer. I believe it is clearly separate from the chief executive post in all cases.

506. There have been a number of developments in that area since we submitted our response last year, and the Committee may wish to be aware of those. The only respondent to the DOE consultation who disagreed with the CIPFA line that the chief financial officer should be a qualified accountant and not the chief executive stated that further clarification was needed on the role of the chief financial officer to ensure that the duty was delegated to the appropriate officer. In the absence of that, that person or organisation thought that, on balance, the chief executive should retain the role of chief financial officer.

507. CIPFA provided just that clarification earlier this year. You may be aware that CIPFA published 'The Role of the Chief Financial Officer in Local Government', which sets out a number of key principles that define the roles and the attributes of the chief financial officer. It is interesting that that statement has been supported and agreed by the Society of Local Authority Chief Executives (SOLACE) and many other parties. The key principles are fairly basic. Each council has to have someone who is designated as a chief financial officer; they can call the person the director of finance, the director of corporate services or whatever. That person, the chief financial officer, must be a member of the council's senior management team. He or she must report to the chief executive and help the team to resource and deliver the council's plans. If a council operates cabinet government, that person must also be on that leadership team.

508. A council must have a chief financial officer who is on the senior management team. The chief financial officer must be actively involved in, and bring influence to bear on, all the big business decisions to ensure that the financial, funding and risk implications are taken into account from the start. That will ensure, in turn, that, whenever the full council gets proposals, those have been properly scrutinised from a financial and risk perspective.

509. A chief financial officer has to be appointed, be in the senior management team, be involved from the outset in the big decisions and have a direct line of access to the meetings of the political body for any discussions that have a financial dimension. The chief financial officer should also be someone who can give elected members the confidence that the finances are in good shape and is able to report to them on financial matters in a jargon-free and reassuring manner. It is also important that the chief financial officer has a direct line to the council when things go badly wrong. The chief financial officer also has responsibility to make sure that there is sound financial management throughout the council, that ratepayers' money is being safeguarded and that there is good value for money. Those are the five main areas, but it also specifies two criteria: the chief financial officer must be a professionally qualified accountant, a member of a recognised accountancy institute, such as CIPFA, and suitably experienced; and he or she has to head up a finance function that has enough resources, the right mix of qualified and non-qualified staff, and is fit for purpose.

510. Most of the 26 district councils have designated the chief executive as chief financial officer. Adherence to the principles in the CIPFA statement means that it is highly unlikely that the chief executive will be able to discharge the chief financial officer role. Our view is that there should be a separation of roles between the chief executive and the chief financial officer in most cases but not every case.

511. The rationale for the separation of duties is set out in our response. It is important that the council has a counterbalance to the chief executive. It needs someone who has sufficient professional status and standing and who can challenge the chief executive if policies or proposals are ill thought through or represent poor value for money and who can challenge excess, fraud and corruption at the highest levels.

512. Very rarely is the chief executive a qualified accountant. It is not appropriate to designate as a chief financial officer someone who does not have the requisite knowledge, skills or qualifications. In the past, that has allowed councils to relegate finance to a third-tier position, with a finance officer who reports to a director of corporate services, for instance. That results in a senior management team that is devoid of financial expertise. I have known senior management team members who have been uncomfortable with such situations. Major proposals have gone through, and they have done their best, but they have felt that a degree of financial scrutiny was missing.

513. You will also notice in the Bill that there is a requirement on the chief financial officer to report to the council on the robustness of the estimates and on the overall debt levels and

borrowing limits. That is not within the remit of the chief executive, unless he or she is a qualified accountant.

514. I must emphasise that the CIPFA statement on the role of the chief financial officer in local government does not say that the chief executive can never be the chief financial officer. It requires that the chief financial officer should be a professionally qualified accountant, should report directly to the chief executive and be a member of the senior management team with a status at least equivalent to that of the other members. If that is not the case, it is now the case that a council will have to comply or explain why.

515. Members will be aware that councils are required to complete an annual governance statement as part of their accounts. The CIPFA statement requires that councils that do not have as their chief financial officers, discharging the roles, qualified accountants who are on the senior management teams, they have to publicly acknowledge that fact. They have to set out the reasons why that is the case, explain their different arrangements and how they are going to deliver the same impact. It will be difficult and embarrassing for Northern Ireland and its councils to be so far out of step with best practice, given all the efforts that were made to make us an exemplar of best practice in other areas, which I outlined earlier.

516. The chief financial officer's role should not go against what has been recognised as best practice. We believe that the chief financial officer should be a qualified accountant, as is required in the England and Wales. I am happy to answer any questions that members might have.

517. The Chairperson: I thought that I was back in the classroom, but thank you for your presentation. You originally thought that the separation role was something for the local government (reorganisation) Bill. Are you now content that it goes through in the Local Government (Finance) Bill?

518. Mr Nicholl: Our response was to the Local Government (Finance) Bill. When the Department collated its responses, it acknowledged that seven organisations, including CIPFA, said that there should be a split. In considering that, the policy development panel said that it would take the issue forward in the forthcoming local government (reorganisation) Bill.

519. To be honest, we do not really have a view. If it is done, it is done, whether through the Local Government (Finance) Bill or a reorganisation Bill. My worry is that if there was no reorganisation Bill, we might drift on for decades with the existing situation.

520. The Chairperson: Thank you. I know that you are talking about accountancy, but, someone would also have to be qualified in policy to undertake the role. A properly qualified person would need to be able to deal with policy.

521. Mr Nicholl: The role, as set out in CIPFA's statement, is about that person helping the council develop its strategy, financial plans and so on. The CIPFA professional qualification is a broad-based qualification that deals with policy development and strategy; there are several modules on that. We would expect any proper public-sector-focused accountancy qualification to cover those aspects.

522. The Chairperson: What are your views on controlled reserves and the degree of flexibility that there should be in how proper financial practices are run out in councils?

523. Mr Nicholl: One aspect mentioned in the legislation is the 'Prudential Code for Capital Finance in Local Authorities', which talks about debt levels and so on. As an institute, we do not have a view as to what levels of reserves should be, but the prudential code provides a

framework whereby the council should have adequate reserves, but also that the main council should have a say in it. Our response really did not deal with that; we are content with how the Bill deals with that.

524. Mr Weir: Thank you for your presentation, Mr Nicholl. My degree is in law and accountancy, so I felt as though I was back in the classroom for a second or two. Did I pick up what you said correctly; did you recommend that the chief finance officer be a member of CIPFA?

525. Mr Nicholl: No; the chief financial officer should be a properly qualified accountant and a member of one of the Consultancy Committee of Accountancy Bodies (CCAB) bodies, such as CIPFA. CIPFA sets the standard for local government, but it is one of six such bodies. Of the people who we work with on the steering group, some belong to CIPFA, some are chartered and some are certified. We are a very broad church.

526. Mr Weir: By the same token — this is slightly cheeky in some ways — we seem to have a situation where chief executives will argue that they do not need a separate post that would arguably hold them to additional account and put a restraint on their power, and, on the flip side, we have a professional accountancy body arguing that there has to be a professional accountant. Do you think people would argue that there is a degree of self interest in the lines that have been taken by the chief executives and CIPFA?

527. Mr Nicholl: No. I have never heard of a major business that does not have a chief finance officer on its board. We are saying that best practice, as recognised everywhere else, is that there has to be a proper degree of financial expertise on the board or on the senior management team. There will be cases where major capital proposals will come through the senior management team, and there may not be anyone there to challenge the implications and to hold the chief executive to account. SOLACE does not have a problem with this; it has supported the statement that separates the two.

528. Mr Weir: When SOLACE gave evidence to us, they drew a slightly different picture of that.

529. Mr Nicholl: Well, SOLACE UK.

530. Mr Weir: I will keep a reasonably open mind over whether there should be a direct separation in legislation. I can see the merits from a practical point of view, but is it just as black and white as you have painted it? You mentioned that in 23 out of the 26 councils, the designated chief finance officer is the chief executive. However, in my experience of local councils, nearly all of them will have a director of finance or director of corporate services with a direct accountancy background. In nearly all of those cases, that person is at the top table. The idea that there is not that financial anchorage may be because the person has a different title.

531. Mr Nicholl: In some cases there is nobody. What has happened in the past, on what I would call spurious value-for-money grounds, is that a council might have decided not to have a director of finance or a finance officer and instead had a director of corporate services and placed the finance role on a lower level. I know certain councils, which I do not want to name, that do not have anybody at the top table. I am not particularly precious about how it is done, just as long as this recommendation is discharged. The chief executive may be an accountant, but what happens when he or she leaves?

532. Mr Weir: We could say that you could combine the roles provided that the chief executive was an accountant. Again, that could be seen as giving an advantage to anyone who is an accountant when a chief executive post comes up. Someone looking in from outside may, unfairly, think that there may be a degree of self-interest in that.

533. Mr Nicholl: I am saying that that might be an excuse for a short-term fix.

534. Mr Weir: In the document, you make comparisons with England and Wales. I appreciate that the situation would have been different had RPA been implemented. However, a lot of the councils here have massively smaller budgets than councils in England and Wales. You said that many of the new councils will have budgets of over £60 million. However, of the existing 26 councils, the only council that would have that level of budget, or anywhere close to it, would be Belfast City Council. Beyond that, the next biggest council would have barely half that budget.

535. I can understand the rationale that, particularly in some of the larger councils, it is good practice to have separation. However, is there not a range of smaller councils, such as Moyle District Council or Ballymoney Borough Council —

536. Mr Dallat: Larne Borough Council.

537. Mr Weir: Yes, Larne Borough Council or wherever; you could put a range of places in that bracket.

538. Even if you give an existing member of staff the post of chief finance officer, it will presumably lead to extra wages, extra money and extra status. Is there an argument that having a statutory separation between a chief executive and a chief finance officer may place a very heavy financial burden on relatively small councils?

539. Mr Nicholl: I take your point that the RPA being on hold changes things. The role still has to be discharged; I know of some small councils that have got into serious financial trouble, so a level of financial expertise is still needed. Rather than having separate chief finance officers, as some of the larger councils would have, there is perhaps more scope to look at having a director of corporate services who has a mixture of qualifications, including finance.

540. In England, there is talk about some councils sharing chief executives. Could some councils share directors of finance? In the current climate, we need to be a wee bit creative. However, that does not say that we can excuse councils not having anyone at the top table who knows about finance.

541. Mr Weir: There is a difference between saying that there should be somebody at the top table who has a financial background and saying that there has to be a separation between the person who is designated as the chief finance officer and the chief executive. There is, at least, a subtle difference.

542. Mr Nicholl: I would not argue that the legislation should say that the chief executive should never be the chief financial officer. It states that the chief financial officer should be a professionally qualified finance person. Otherwise, it is like saying that a chief legal officer need not know anything about law. We are saying that there are very strong financial roles and that there is a strong role for a finance professional on the management team.

543. I agree that we need to be creative in how we look at that. For example, in Scotland recently, a public body advertised for a director of corporate services, which was a position that had responsibility for finance and HR. The job specification stated that that person would have to be either a qualified accountant or a member of the Chartered Institute of Personnel and Development (CIPD). The chairperson of the audit committee threatened to resign unless the job specification was changed, because it could have resulted in there being no qualified accountant in the top team. The job specification was changed so that the successful applicant would have to be a qualified accountant and a member of the CIPD. The body got someone who had all the skills. That body was small and flexible, and there are different ways to get around the problem.

544. I am arguing against a situation where the role of the chief finance officer in councils is diminished. You could end up with nobody in that scenario, and that is not something that CIPFA agrees with.

545. Mr Weir: I suspect that the person who was a qualified accountant and a member of the CIPD was rubbing his or her hands when he or she saw the advertisement.

546. Mr Kinahan: Most of the questions that I was going to ask have been asked already. I, too, did a Bachelor of Commerce accounting degree at university. I remember one of the key things that I was taught was to challenge rules in order to ensure that everything was always explored and to make it better.

547. I am concerned that we are trying to set too tight a framework. If you go purely for accounting skills and rules, you will restrict councils. From a lot of what I have seen in my life, the accounting profession stops risks being taken, but risks are part of how we all make our decisions. I am concerned that you are trying to set too tight a framework.

548. Could we not train people who are already in councils; particularly before RPA, if, indeed, RPA happens? They would not have to have passed all their accounting exams; they would just need to know enough about what they are doing. Could we accept people who are already in councils and who have good nous and acumen but do not happen to have the accounting qualifications?

549. Mr Nicholl: I take your point. People can be trained, but one of the jobs of the chief financial officer is to promote good financial management. That would involve, for example, bringing elected members up to speed on financial skills and ensuring that budget holders have financial skills. We believe that, in the mix at the top table, there needs to be a chief financial officer who knows what he or she is doing and is a strong counterbalance to the chief executive. When I worked for the Northern Ireland Audit Office, I knew of cases where big proposals went through, and there were great ideas in which there may have been a 75% EU grant. However, there was no one at the top table to say that the council should hold on for a minute and think of the revenue consequences. Indeed, one business case was predicated on 10,000 visitors a year, and there ended up being 103 visitors.

550. The chief financial officer needs to be someone who challenges proposals from a financial background and has the status to challenge the chief executive if he or she goes off at a tangent. Sometimes, in local government and other sectors, chief executives head off on tangents but no one has the strength of character or professional status to tell them to hold on a minute, that they are running up debts and are going to get the council into serious trouble. We believe that the role of the chief financial officer, as accepted by CIPFA, SOLACE and everyone else in the UK, is vital in ensuring good financial management in local government. Local government here will have to record that in their annual governance statements, and it will not look good.

551. Furthermore, if a council has a chief financial officer who is risk averse, it has the wrong chief financial officer.

552. Mr Kinahan: That is good to hear.

553. The Chairperson: That is an important point.

554. Mr McGlone: Thanks very much, Mr Nicholl. I do not feel like I am back at school, because I never sat at the front.



555. I buy into your line of thought that the chief financial officer should be someone who is prepared to come up front and challenge the chief executive. I also noted your earlier reference to challenging excesses, fraud or corruption at the highest levels. I ask this question because, frankly, I do not know the answer: is there a defined set of sequential steps that a financial officer should take when faced with that situation? I buy into your argument entirely. It probably would have fitted a wee bit more cosily had we been moving towards RPA, because of the size of some of the councils. What are your thoughts on those sequential steps? Do they need to be enshrined in legislation?

556. Mr Nicholl: In England, the chief financial officer has a "red card". If the chief executive or council are going to commit to unlawful or unbudgeted expenditure, the chief financial officer has a line to the council through which he or she can issue a warning. That can lead to conflict on occasion. CIPFA's statement on the role of the chief financial officer, which can be found at appendix a, has three pages of steps that should be taken to mitigate that situation, ensure that it does not lead to unresolved conflict and work it out appropriately. I can provide details of that if you would like.

557. Mr McGlone: Yes; please. The matter is addressed in your statement, but I am trying to find out whether there is a potential read across from that into the legislation. I have not read the CIPFA statement.

558. Mr Nicholl: It is available, free of charge, on the web for anyone who wants to read it.

559. I do not believe that that can be included in the legislation. It is better dealt with in guidance than in legislation. It is quite tricky to cover that sort of thing in legislation.

560. Mr McGlone: I appreciate that.

561. Mr B Wilson: My questions have been largely answered. However, may I clarify that the chief executive remains the accounting officer for the council and that there is no problem in that regard?

562. Mr Nicholl: In England, Scotland and Wales, the post of chief financial officer is a specially designated one.

563. "Accounting officer" is a term that is used in central government. The equivalent chief financial officer post in local government in England is held by a qualified accountant. However, the chief executive is the head of the senior management team. In the central government scenario, Treasury has said that the accounting officer of a Department must have a qualified chief financial officer on the senior management team and on the departmental board. Therefore there is a read-across. Treasury is fully supportive of that statement.

564. Mr B Wilson: Would the chief executive answer for the council's expenditure?

565. Mr Nicholl: The chief executive answers to council, but the chief financial officer has a specific role on matters relating to proper administration, good controls and so on.

566. Mr B Wilson: Therefore, the chief executive officer could have a double veto over something that the executive and the council wanted to do.

567. Mr Nicholl: If a council had a proposal that had not been thought through, for instance, and the chief financial officer had concerns, he or she would have the right to go to council and inform it of his or her concerns. There is a process to iron out those concerns. He would not

have the right of veto, per se, but he would have the right to go to council and to raise those concerns. Those checks and balances are important. It has worked well across the water.

568. Mr B Wilson: Can the council carry out its investment against the wishes of the chief financial officer?

569. Mr Nicholl: You will see that the legislation refers to the CIPFA prudential code, which deals with capital investment. It requires a framework in which the overall level of debt will be looked at and assurances must be made that the capital plans are sound. The DOE has rules in place about how much can be invested and so on. The chief financial officer will not counter the wishes of the council, where it is acting lawfully and appropriately.

570. Mr Dallat: You continually refer to "across the water". The councils over there are real councils, are they not? They have responsibilities for a range of services, such as education, health, and the fire and ambulance services. We have 26 councils, and those outside Belfast are very small. They were introduced in May 1973 for a reason. Is it not unrealistic to expect all of those councils to have a chief executive and a finance officer? I do not understand that.

571. The councils are run by the elected representatives. I think that you touched on it briefly, but should there not be provision in the legislation to compel people not to sit around a table all night, usually from 7.30 pm until 12.00 midnight, discussing flowerbeds and only passing multi-million pound projects when it gets late, as they have done in the past?

572. Mr Kinahan: That is quite true.

573. Mr Dallat: I want to hear your views on that.

574. The Chairperson: I do not want you to comment on the lateness.

575. Mr Nicholl: I agree wholeheartedly, and there are many examples of instances in which councils have spent many hours debating small things. Someone once said to me in private company that they always put a bicycle shed in their plans, because the board would get so lost looking at the colour of the bicycle shed that it would ignore the big picture.

576. You are right, Mr Dallat. That is one of the reasons why the role of the chief financial officer is important. First, the proposals have to be scrutinised by the senior management team before they come to the council. Any concerns need to be flagged up to the council. Subsequently, someone needs to advise the council, so that it can draw attention to the issues and make sure that they are addressed. There have been a lot of occasions on which big proposals have shot through, and, subsequently, major weaknesses have emerged because there was not proper scrutiny. You are saying that some councillors are skilled in business, and some pass resolutions quickly. That puts a premium on the senior management team and on having that expertise. In looking at the skills mix, any organisation of any size has to have a proper level of financial expertise round the table.

577. There are huge councils in London and among metropolitan councils and some unitary authorities. There are also reasonably small organisations, and they are also expected to comply with the legislation. I accept that there are some enormous organisations, but there are also small councils, which do not have some of the services that you outlined. They are not saying that they do not want a chief financial officer. They are complying, and they are happy to do so.

578. Mr Dallat: Finally, the witnesses from Derry and Strabane councils said that they rely on your organisation for advice on investments. Should there be something in the legislation to

ensure that local councils do not get involved in another Barings Bank episode and invest in Asia and elsewhere without knowing what they are doing?

579. Mr Nicholl: We do not give advice, but we set the standard through our code of practice for local authority accounting. We also produce a code of practice for treasury management, and our prudential code sets out key indicators to stop a council getting overloaded with debt.

580. It is very important that councils keep abreast of their capital spend, and I could give you one example of a council here that spent tens of millions of pounds on a capital project. That council become hugely indebted, and its activities had big implications for ratepayers, and guess what, there were no accountants in the first three tiers of the council. Some councils take the risk of not paying £10,000 or £15,000 to employ a chief financial officer, yet they go on to lose £10 million or £15 million on a big project.

581. Someone once said of accountants that they know the cost of everything and the value of nothing, but the danger here is that councils take the view that it may cost them a few extra bob to have a properly qualified chief financial officer when the cost of not having that person in place can be enormous. If such people are employed there is a huge increase in standards and that is what we are aiming for.

582. Mr W Clarke: Thank you for your contribution. I declare an interest as a member of Down District Council.

583. I largely agree with what John Dallat said about the councils across the water being far bigger and having bigger responsibilities. The Bill was geared to the RPA. Should the Department not direct the transitional committees to look at having a financial officer for all the merged councils in their respective groupings? It is a dead duck if we are talking about Moyle District Council and others councils having finance officers. Direction needs to be given in a similar vein to what is in the Bill to get transitional committees to get their act together. What is your opinion on that?

584. Mr Nicholl: I agree. When the Bill first came out we were heading towards the 11-council model. It now seems that we will be retaining the 26-council model, but there is still pressure on councils to deliver efficiency savings. There should be some pressure, but we should not be saying to some councils that they are so small that they do not need financial expertise. All councils need that expertise, but they also need to be thinking of constructs that will deliver and not necessarily only in their own councils. Mr Weir spoke about councils thinking creatively. There is a merged service for building control, so why could two or three councils not come together and appoint a proper director of finance? It is not beyond the wit of man if there is a wee bit of impetus. I think that you are saying that we need impetus from somewhere.

585. Mr W Clarke: Yes; we need someone to direct the councils.

586. The Chairperson: Thank you very much for your contribution to the Committee. We will certainly take your views on board.

587. Mr Nicholl: Thank you.

23 September 2010

Members present for all or part of the proceedings:  
Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)

Mr Roy Beggs  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Mr Philip Faithful  
Councillor Thomas Kerrigan      Strabane District Council  
Mr Joe Campbell                      Derry City Council

588. The Chairperson (Mr Boylan): We will now receive a briefing from the Derry City Council and Strabane Transition Committee on the Local Government (Finance) Bill. I welcome Philip Faithful, who is the chief executive of Strabane District Council, Joe Campbell, who is the treasurer of Derry City Council, and Councillor Thomas Kerrigan from Strabane District Council.

589. Mr Philip Faithful (Strabane District Council): First, I thank you for inviting our transition committee to give oral evidence. Obviously, the review of public administration (RPA) has changed dramatically the face of local government for the next few years. However, Strabane and Derry will continue their work, particularly on collaboration exercises. The transition committee continues to meet, and chief executives across the west, particularly those from Derry and Strabane, continue to meet.

590. I reiterate that the transition committee welcomes the new Local Government (Finance) Bill and the opportunity to modernise the current legislative framework on local government finance and councillors' remuneration in Northern Ireland. Committee members have a copy of our written submission, so I will not dwell too much on the clauses in the Bill. Instead, I want to highlight our key issues with it.

591. The legislation aims to give greater freedom to Northern Ireland's local authorities, especially in relation to the capital finance system, and we urge that that greater freedom should not be constrained through the use of regulation. However, we are pleased that the Department has committed to further consultation on any subordinate legislation.

592. Our transition committee makes the case for adequate legislative provision to support important new initiatives and models for service delivery in the future. It urges that that is clarified as soon as possible. Obviously, that includes the power to participate in public-private partnerships (PPPs), public finance initiatives (PFIs) and local asset backed vehicles (LABVs). It is envisaged that such initiatives may be required for councils to put in place arrangements for service delivery models, such as that for waste management, and effectively manage their own assets.

593. We also support the point made by NILGA that a new governance framework needs to be in place to complement the provisions in the Bill given the complexities in the local government accounting framework and in line with specific guidance that regulations should require the designation of a chief financial officer and the separation of the roles of chief executive and chief financial officer.

594. It is noted that, under clause 1(2), the Department has proposed to take forward the separation of the roles of the chief executive and the chief financial officer in the forthcoming local government (reorganisation) Bill. We support that separation, particularly in light of the responsibilities that are placed on the chief financial officer to submit a report on the robustness of councils' estimates under clause 4, afford councils the adequate financial reserves under clause 6 and review the councils' affordable borrowing limits under clause 13.

595. We also support NILGA's recommendation that the Local Government (Finance) Bill should include provisions for the inclusion of social clauses in local government procurement similar to those in central government procurement.

596. Our transition committee also wishes to comment on the other specific clauses of the Bill. Clause 7 makes provision for specified reserves to be designated as controlled reserves. We support the finance officer's recommendation that, in the spirit of greater financial freedom, no reserves should be designated as controlled reserves by the Department. That is the case in the GB regulations that derive from the Local Government Act 2003. We further contend that the guidance that the DOE issued in December 2009 on the need to retain a minimum balance of at least 5% of the district fund achieves the same objective on a voluntary basis. Councils will also be expected to follow the guidance that is given in the 'Prudential Code for Capital Finance in Local Authorities'.

597. On clause 27, the statutory formula for the rates support grant needs to be reviewed post RPA to confirm that it continues to meet its objectives, especially in light of the establishment of any potential new local authorities in the future and functions that may transfer from central government to local government. Furthermore, it is important that the rates support grant is adequately resourced and ring-fenced to prevent cuts, such as those that occurred this year with the general grant resources budget, which was cut by 5% prior to the start of 2010-11. That was followed by an end-of-year cut of almost 6% by the end of July. I can only speak from Strabane council's perspective, but the overall cut of 11% impacts very much on the poorest councils in Northern Ireland. That is particularly so in the case of our transition committee.

598. The combined cut in resources grant amounts to £365,000. That total is made up of £215,000 from Strabane and £150,000 from Derry City Council. That is essential funding lost to both councils, which, when combined, have the highest unemployment and deprivation statistics in Northern Ireland coupled with the poorest health, social and educational statistics that are associated with high unemployment and deprivation.

599. With your approval, Chairperson, I have produced a profile of Strabane for members, which I will pass around. I will not refer to it, but Councillor Kerrigan may do so later. The profile highlights the particular needs that we have in Strabane. If the general grant resources were to be phased out entirely, it would result in a funding loss of almost £1.9 million for Strabane District Council, which would equate to a district rates increase of 25%. For Derry City Council, the elimination of the general grant would result in a loss of almost £1.4 million, and equate to a district rate increase at 4.2%. The ratepayers in both councils would, therefore, be at a distinct disadvantage compared to ratepayers elsewhere in Northern Ireland. That is why we strongly request that the new rate support grant is adequately resourced and ring-fenced.

600. The transition committee of Derry and Strabane councils broadly welcomes the provision of the Bill. Thank you for allowing us to make the presentation this morning.

601. The Chairperson: Do any other council members to speak?

602. Mr Joe Campbell (Derry City Council): No, Chairperson; that is our oral evidence.

603. Councillor Thomas Kerrigan (Strabane District Council): I thank the Committee for listening to us this morning. The chief executive, Philip Faithful, has covered most of the ground related to our particular concerns. As some members know, our area has been referred to as maybe the poorest of the north-west. We do not always want to come along with a begging bowl, wiping the tears away, and giving the impression that we are always in need. However, at this juncture, because of the recession and so on, industries, such as the building industry, have slowed down. They have slowed down right across the Province, but we are looking for a rate base, because we would suffer heavily if things were to be implemented the way that they have been set down over a three-year period.

604. As the chief executive said, if we had to suffer a loss of something like £1.9 million from our base, I think it really would put the light out. Our population is small, and we have very little to work on. Members have a profile of Strabane and know the history of the area. I ask you to look sympathetically at the cause of the people of Strabane District Council.

605. I have represented Strabane District Council since 1981. I know that things have been up and down, but we have always tried to keep a steady hand. Let us hope that we will be able to steer through this time. I ask you to look at the presented evidence and the profile as sympathetically as possible.

606. Mr J Campbell: At the end of the day, as highlighted by Strabane District Council, the north-west, in particular, relies very heavily on the resources grant. The cut, which is around 11% so far, represents a combined income cut funding cut of £365,000 for the two councils. At the start of the year, the overall resources grant allocation was £19.5 million, but that has been cut by 11%. To put that in context, the Derry, Strabane and Limavady councils, which make up the north-west group, receive almost 24% of that £19.5 million. That illustrates the type of impact that there will be, particularly in the north-west. Other councils are in similar positions, but those in the north-west, in particular, rely on almost 24% of that baseline allocation.

607. The Chairperson: Thank you for your presentation. You are welcome to this morning's meeting, Councillor Kerrigan. I take on board your comments on resources, but I have a few questions about the Bill. Obviously, you believe in the separation between the roles of the finance officer and the chief executive officer in both Derry and Strabane councils. Should the designation of an officer to that role lie with the local council?

608. Mr J Campbell: If the 26 councils are to continue, that designation will have to be a matter for each council. It will be a matter for Strabane District Council and Derry City Council to decide.

609. The Chairperson: You require that flexibility?

610. Mr J Campbell: Yes.

611. Mr Faithful: It will vary from council to council, and I am sure that some of my colleagues will have different attitudes from mine. If we were in the transition period of 11 councils, the role would certainly lie with the chief finance officer, as we reported.

612. The Chairperson: What guidance would you like to see handed down from the Departments in relation to investments, for instance?

613. Mr J Campbell: At the moment, there is not a lot of guidance from the Department on investments. Most of the controls are currently on spend. If we wished to undertake a capital project, we would have to get loan sanction for borrowing. If we wished to allocate funding from the capital fund towards capital projects, we would need to get departmental approval. By and

large, we follow the guidance on investments that is issued by the Chartered Institute of Public Finance and Accountancy (CIPFA).

614. Mr McGlone: Thank you for your presentation. It is good to see you, Tommy. I know that Mr Campbell was here last week, and he was accompanied by a representative group of councillors. The fact that you had somebody from Craigavon Borough Council is probably what brought things into sharp focus for me. You are asking for flexibility in finance, but serious questions are being asked about Craigavon Borough Council and the way in which it has spent ratepayers' money. It has been said that, on a number of occasions, the money has been spent with some degree of disregard for guidance from the local government auditor. How will sufficient checks and balances be brought in to prevent against the abuse of ratepayers' money and a cavalier attitude towards it?

615. Mr J Campbell: That is an important issue. Better governance would be achieved if responsibility for that lay with a chief finance officer in a role that was separate from that of the chief executive. If there was a situation in which members of a particular council wanted to spend money in a certain way, the safeguards that are in the Bill in relation to the adequacy of reserves, affordable borrowing limits and the robustness of rates estimates are all safeguards to be brought.

616. What we have asked for so far is that councils should be given flexibility. However, with greater freedom comes responsibility, and there will be matters where there may be conflict between the local government auditor and councils. I think that is provided for in the Bill. I am not sure that by designating certain controlled reserves that you would necessarily avoid such situations, but, by and large, we all work very well with the local government auditor.

617. Guidance, and it was only guidance, was issued suggesting that when councils set their rates, they should aim to maintain a district funding reserve of 5% or more. That guidance was largely followed last year. There may well be good reasons why, from time to time, councils might not be able to maintain that 5%, but in the longer term, there would be an aspiration to keep it at 5% and above, rather than end up in a situation where they have invoked one of the controlled reserves. Flexibility, if responsibly managed by the councils, would be a better way to go.

618. Mr McGlone: That is the problem; it has not been responsibly managed in this case. I am sorry for pouncing on you, but you are one of the people at the coal face; you are the person with experience. If abuses are happening in the current regime and you are asking for further flexibility, how would you see the legislation having sharp enough safeguards to prevent that from happening? Rather than wait until the horse has bolted and the abuse has happened, how would you see finance being managed responsibly in circumstances where people are quite clearly working to an agenda that is riddled with irregularities and abuses?

619. Mr J Campbell: I hope that that is an extreme example. Whether there is a controlled reserve or not, I think that there could be similar issues if councils wanted to go in certain directions. I think that there could still be that conflict whether there is a controlled reserve or not. The local government auditor is very much the safeguard here in that his staff carry out an audit every year and that would highlight those types of matters if they arise. My question is whether a controlled reserve would necessarily control that. I would have thought that you could end up with a situation where it would be reported back that a controlled reserve had been breached. It may be done in that way, so it could still be retrospective.

620. Mr McGlone: I just want to tease this issue through to conclusion, Mr Campbell. Do you see local government having sharper, more defined powers of intervention?

621. Mr J Campbell: That is a possibility. Maybe all councils would have to accept controlled reserves because of what one council might do. My understanding is that, under the Bill, reserves can be designated as controlled reserves at any point. Maybe, in that case, that should be done at individual council level rather than collectively.

622. Mr Faithful: I suppose it comes back to the element of governance within each council as well. It depends on what kind of scrutiny role the council has already put in place. For example, Strabane council has an audit committee, external and internal auditors, and independent members who monitor the position of the council regularly. Surely that is protection even before we get to external audit? If we try for a major development opportunity, we would always run it past the chief auditor.

623. Mr McGlone: Who or, more importantly, what are the independent members of the audit committee?

624. Mr Faithful: They are people who have responded successfully to a public advertisement. A qualified accountant, for instance, scrutinises the role of Strabane District Council. He asks independent, searching questions on the performance of our council. That is how we operate.

625. Mr J Campbell: The provisions in the Local Government (Finance) Bill are strict. Until now, councils have not had to submit a report stating that their estimates are robust, that the reserves are adequate or that they are staying within an affordable borrowing limit. Those are rigorous statements to which somebody is going to have to sign up.

626. Mr McGlone: If those things are not being reported, I would like to know why.

627. The Chairperson: We are going through a Bill process, but it needs to be for every council. It should not be about rapping knuckles or disciplinary procedures; it is about a proper procedure to deal with finance and value for money for the ratepayer. I know that there are examples out there, but that should be our starting point.

628. Mr Dallat: Chairperson, I am sure that you and all members will agree that when one council does something terribly out of place, it damages the image of local government. We are like a two-tiered cake. The Assembly has its role to present, as does local government, and the failure to introduce the review of public administration means that there will be another four years of that.

629. The legislation is sadly lacking in control of investment. I am sure that you remember the Barings Bank saga and how some of our local councils got their money back. Others did not, but it was brushed under the carpet. You said that the matter was largely under the control of some organisations, but I missed that part.

630. Mr J Campbell: One organisation is CIPFA —

631. Mr Dallat: Will you explain what that is?

632. Mr J Campbell: CIPFA is the Chartered Institute of Public Finance and Accountancy.

633. The Chairperson: It will brief us later today.

634. Mr J Campbell: CIPFA is inclined to set the financial guidance for all of the public sector. It has produced guidance for councils on how they should set their Treasury management policies that determine how they invest. I accept the point that is being made about investments,



particularly in this financial climate and considering the state of the banks. More regard should be paid to investments so that the likes of the situation with Barings Bank is avoided.

635. Mr Dallat: That is the point that I was trying to drag out, and I am glad that we have got it. It is something that the Committee needs to look at, because, even in stringent times, there is a need for investment and long-term planning. We need legislation that has some kind of control. CIPFA —

636. The Chairperson: You can ask its representatives all the questions that you want to in 10 minutes' time.

637. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council. I would like to explore the issue of controlled reserves, which you advocated, for safety purposes, should not be counted against council assets. I am aware of two areas of control: the marina, which is dredged every five years and, for some councils, landfill sites. Millions of pounds can be required to cap and seal them off, etc. If you want to avoid yo-yo rates — low rates one year and sudden hikes — I would have thought that it would make sense to have controlled reserves. If you had those, a huge increase in rates would not appear as soon as a landfill site was closed off and the reserves that were set aside for that were used up. The failure to have controlled reserves means that rates have to be hiked suddenly in such a situation. Does it not make sense to have controlled reserves?

638. Mr J Campbell: It really comes down to the needs of individual councils. In some of those examples, you may have little choice for regulatory reasons. Councils have to put proper financial plans in place, and taking account of the provisions in the Bill will be a very important consideration in doing that.

639. It is my understanding that there are no controlled reserves under the GB legislation. In Northern Ireland, councils have signed up to guidance, which was issued last year in the run up to RPA, that councils should maintain 5% of their reserves. Some time should be given to see whether that works before controlled reserves are introduced.

640. The issue with controlled reserves is that you are transferring the decision from the local council to the Department. Where possible, it would be better for such decisions to be made by the local council, albeit giving due regard to the financial state of the council.

641. Mr Beggs: Do you agree that sealing off a landfill site may exceed the 5%? Also, as we are in the middle of the RPA, some councils may decide to pass the problem on to the new councils, and, therefore, inappropriate expenditure decisions could be made. Do you agree?

642. Mr Faithful: I accept that, and, in light of the RPA, councils may have anticipated that happening. If all 26 councils are going into a new environment, whether or not it is the 11-council model, they will still be local councils. Forgetting about the old council and thinking that an issue is for the future council to deal with is not an option. The reserves are very important. I have always said to my officers that the reserves need to be kept at 5%, simply because we do not know what the future holds, as you said.

643. Mr Beggs: Mr Campbell seemed to accept that landfill capping and dredging may be appropriate areas for controlled reserves. In what areas would it not be appropriate to have controlled reserves? Will you give me examples of areas where there are presently controls but there should not be?

644. Mr J Campbell: I was not necessarily agreeing that there should be controls. The likes of landfill capping, which is a necessary but very costly exercise for councils, is an issue that the

local government auditors pay very close attention to when they do an audit of the accounts. Our council already has the full provision for that; the cost to Derry City Council of closing and capping its landfill site will be £9 million. We have already set aside the money for that, and the work is just about to start. My understanding is that that is something that the auditor would comment on quickly if he or she found that other councils had similar liabilities but had not made adequate provision for them. Therefore, it can be managed, by and large, without the need for control. Control may stop you from doing something that is your environmental responsibility.

645. Mr Beggs: I do not understand what the problem with control in that instance could be, because you would still have the provisions sitting there.

646. Mr J Campbell: I do not think that anybody is arguing against controls. Really, we are saying that the guidance that has already been agreed for councils to maintain a 5% reserve is sufficient. If that works, why not do it by voluntary guidance, rather than through controls?

647. Mr Beggs: Do all councils follow that guidance? That is the question. I am not sure whether they do.

648. Mr J Campbell: I cannot speak for all councils, but that guidance was issued last year, and I would have expected all councillors to follow it. Mr Weir: On that point; I see the point on the controlled reserve side of it, but if there were no controls, there would be nervousness. Is there a sort of half-way house for the 5% figure in regulations that would mean, for example, that the council would have to have due regard for any advice given by the auditor? Could something be put in that, while it would fall short of a controlled reserve, would have some level of restriction or compulsion to do something which, realistically, most people are doing voluntarily anyway? Is a compromise route forward possible?

649. Mr Faithful: The question is whether the local government auditor would give the council flexibility on that in the long term, because that rests with him. If a council decided to have a 3% funding reserve, it could have problems.

650. Mr Weir: Presumably, the auditor would suggest what the level would be. If something was put in place to which the council had to have regard — a little bit beyond what is entirely voluntary at present — it may fall short of the restriction that is there by way of controlled reserves.

651. The Chairperson: What the Bill proposes to do, or should do, is ensure that there are proper financial practices in councils. Are you saying that that could operate within controlled reserves or outside of that?

652. Mr J Campbell: A controlled reserve would take an awful lot of freedom away from councils, but I reiterate that with more freedom comes more responsibility for councils, not less. The Bill designates a chief financial officer to sign off all those statements, and I fully accept that councils should be paying due regard to that now; it should not take a new Bill to make them sign off on those statements. However, although we all do it, the requirement to report is much more formal.

653. I think that controls take away flexibility. For example; there may be good reasons why a council may not be able to maintain a 5% reserve in one particular year, because if it is not possible to maintain a 5% reserve, all that a council can do is to put more onto the rate. That is the only way it can replenish the reserve, so there may be good reasons why a council may want to be flexible from year to year. That is something that, currently, would always have to be fully discussed with the local government auditor in order to ensure that it would be acceptable. Guidance allows that to happen. Controls mean that a council has breached it, and therefore has

to do something about it. It just gives that wee bit more flexibility. However, as I said, greater freedom means greater responsibility for the councils, particularly for the chief financial officer who will have to sign off on it.

654. The Chairperson: With proper checks and balances?

655. Mr J Campbell: Yes.

656. The Chairperson: Thank you for your presentation. I suggest that we invite the Chief Local Government Auditor to give his opinion in relation to controlled reserves.

657. Mr McGlone: I think that would be very useful.

14 October 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Roy Beggs  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Alastair Ross  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Ms Julie Broadway  
Mr Dickson Holliday  
Ms Lizanne Kennedy  
Mr John Small  
Department of the Environment

658. The Chairperson (Mr Boylan): I welcome Julie Broadway from local government branch; John Small, head of local government finance policy; Dickson Holliday, from local government branch, and Lizanne Kennedy, from local government branch. I also welcome Shauna Mageean, the Committee Clerk who is dealing with the issue on the Committee's behalf.

659. I refer members to their packs, which contain a letter from the chief local government auditor with his view on the proposed clause relating to reserves. There is also a letter from the Committee to the Department on the issues raised by the local government auditor that, in some cases, expenditure on corporate credit cards for chief executives and directors are being authorised by the respective claimants themselves. Members also have a copy of the Department's input to the clause-by-clause summary of responses, and copies of the draft regulations and guidance that the Department proposes to bring forth under the Bill. Those drafts are subject to full scrutiny and clearance by the Departmental Solicitor's Office and the Minister.

660. At the outset, I advise Members that it is essential that we decide today whether we require the Department to make any amendments to the Bill, so that it can provide us with sight of the text of the amendments prior to the formal clause-by-clause scrutiny stage, so that we can come to a decision on the clause for inclusion in the Committee report. I say that because I know that, from time-to-time when we are undertaking clause-by-clause scrutiny, we get an odd grunt

rather than a direction forward. It is important that we give a clear explanation of what the clause and the amendment means. I refer members to the summary of responses, which details the issues that have been raised on each clause. Members may wish to refer to that document throughout the session.

661. Clause 1 concerns the duty to make arrangements for proper administration of financial affairs. It provides that there be a clear separation between the chief executive officer and the chief financial officer. Is that correct?

662. Ms Julie Broadway (Department of the Environment): The legislation does not say that there should be a definition of roles. It says that an officer has to be designated as a chief financial officer.

663. The Chairperson: That is the issue for members. I was going to go through this today, but we are waiting for research papers on the clause. I suggest that we wait until we see the research papers.

664. The Committee Clerk: NILGA is doing some research to establish the status quo in the 26 councils and the capacity to, for example, re-designate an existing officer rather than having to recruit someone new. That research will probably not be available for another four weeks.

665. Mr Weir: Julie can confirm whether I am right about what is proposed in the legislation. Some people were pushing for direct separation, legally, so that someone different would have to be appointed. Would the legislation allow an arrangement for the CEO to be the chief finance officer if he were designated as such?

666. Ms Broadway: Yes, that is the case.

667. Mr Weir: It allows a bit of flexibility.

668. Ms Broadway: The Department will issue guidance on that. There does not seem to be any consensus view on that. Some people think that having a definite separation of roles is a good idea and others have said that, on a practical basis, ensuring that separation could, particularly given that there are 26 councils, cause difficulties, particularly for the smaller councils.

669. Mr Weir: I appreciate that we are waiting on the response, but it may be that the guidance will clarify the situation.

670. The Chairperson: Are members content to wait for the research paper?

Members indicated assent.

671. The Chairperson: Clause 2 deals with guidance and regulations on accounting practices. I remind members that no issues were raised about it. Julie, will you provide a brief outline of the clause?

672. Ms Broadway: Clause 2 requires local government bodies to have regard to guidance that is issued or specified by the Department on accounting practices. In this instance, local government bodies will include councils, committees of a council for which accounts are kept separately, and joint committees of two or more councils.

673. The Chairperson: Are members happy with the general content of clause 2?

Members indicated assent.

674. The Chairperson: Clause 3 is about the consideration of estimated expenditure of the annual budget.

675. Ms Broadway: This will require a council to approve estimates, authorise expenditure and fix the amount to be raised by rates for the coming financial year.

676. The Chairperson: No issues were raised on that. Are members content with the clause?

Members indicated assent.

677. The Chairperson: Clause 4 deals with the requirement of the chief financial officer to submit a report on the robustness of estimates.

678. Ms Broadway: It also requires councils to take that report into account when considering the estimates for the next year. I know that some comments have been made about that, so I will pass over to John.

679. Mr John Small (Department of the Environment): One of the consultees raised the question of robustness of the estimates, and we hope and expect that the adherence of councils to the regulations and guidance on financial management, which includes regular financial checks, will result in that robustness. The guidance that we issue, the prudential code for capital finances in local authorities, provides guidance on estimates and on the factors that should be considered when completing financial reports.

680. The Bill requires councils to give regard to the reports and ensure that budgets include sufficient reserves to cover all significant identified risks and allow for unidentified risks. The combination of following that guidance and the designation of the chief financial officer should produce estimates of sufficient robustness.

681. The Chairperson: Are members happy with the general content of the clause?

Members indicated assent.

682. The Chairperson: Clause 5, which relates to the in-year review, states that a council shall keep its financial position under review. I remind members that no issues were raised in respect of this clause.

683. Ms Broadway: As you said, Chairperson, clause 5 requires a council to keep its financial position under review during the financial year.

684. The Chairperson: Are members happy with the general content of the clause?

Members indicated assent.

685. The Chairperson: Clause 6 requires the maintenance of reserves. I remind members that one respondent asked that the regulation provide sufficient flexibility and the potential to accumulate adequate reserves to achieve medium and longer-term strategic objectives.

686. Ms Broadway: I will give the background to clause 6 and then pass over to John to deal with that specific query. Clause 6 allows the Department to make regulation in respect of reserves. It requires the chief financial officer to report to the council on the adequacy of its

financial reserves for the year. It also requires the council to give regard to the report in its consideration of estimates for the next year. The Department does not plan to place controls on reserves at present. Regulations in respect of reserves will be made only in exceptional circumstances, when a council does not act prudently and disregards its chief financial officer's advice on the adequacy of reserves.

687. Mr Small: You have stolen my thunder. [Laughter.] As Julie said, the inclusion of clause 6 provides a power for the Department to act only in extremis, when a council is perceived to be acting improperly. The approach to reserves and the closely related matter of capital investment is set out in the prudential code for local authorities. Reserves will also be the subject of departmental guidance.

688. Mr McGlone: Will this legislation be a case of shutting the door after the horse has bolted? You talked about acting in extremis. What do you see as the anticipated sequence of events if, for example, someone throws a bit of a bender, or a rogue council uses funds improperly or makes an improper expenditure?

689. The Chairperson: May I seek a clarification first, Mr McGlone? Clause 6 relates to clause 7. Are we talking about both? Is there a crossover?

690. Ms Broadway: Yes.

691. Mr Small: Either the local government auditor or a whistleblower would alert the Department to something improper. We could then ask the local government auditor to do an extraordinary audit. That would be done and issued in a very short time. I agree that there is a hint of "after the horse has bolted". However, it is a wee bit like a burglar: you cannot stop him until he has actually burgled.

692. Mr McGlone: I will take your analogy a stage further. If you see a burglar breaking a window and going into a house, you know that he is about to burgle even if he has not come out yet.

693. Mr Small: The only real information that we could get is from a whistleblower, a councillor, the chief financial officer or the local government auditor.

694. Mr McGlone: I need to tie this down in my own mind. Say, for example, a case comes before a council. A member, or members, will have seen that an improper expenditure is about to be made, or that a decision was taken one night to spend money on a certain project; a holiday to Tenerife perhaps, to take it to the absolute. What is the procedure in such a case? From what you have told me, this legislation will kick in after the expenditure has been committed and the project has been undertaken. I am just trying to get the picture clear in my head.

695. Mr Small: In that scenario, the act of burglary would not have been committed, because one would only have broken the window. We would get the local government auditor to examine what is happening within three days. We would then be able to restrict borrowing limits and impose controls on reserves. The local government auditor also has powers.

696. Mr McGlone: I know all that. I am sorry for labouring the point. If an issue comes before a council, there could be a split, with a minority saying that there is an irregular or improper use of public funds. However, a decision could be taken by a majority of the council in favour of it. If something is irregular and improper and is drawn to your attention, or to the attention of the local government auditor the following morning, what provision does this legislation make for that situation?

697. Mr Small: It does not add significantly to the existing position where the local government auditor can call the council to account for damages. It provides us with a broader ability to impose control on reserves and impose a borrowing limit. That is for the future.

698. Mr McGlone: So, the Bill presents no opportunity to prevent the intent to do damage; it only waits until the damage is done.

699. The Chairperson: For example, at the moment, there is the district fund and there is a certain percentage involved. It is good practice to have that. Clauses 6 and 7 will apply together, so one can specify a minimum level. It is correct that for any council going outside that level, the door will be bolted after the event. If a council goes over the threshold of 5%, 6% or 7%, you will be coming in after the event.

700. Ms Broadway: I understand that. If we become aware that something irregular has happened, the Bill gives us the power to make regulations. The whole purpose of the new financial regime is the implementation of the prudential code and various other guidance that councils and their finance officers will have to follow. The issues will be flagged up through the prudent financial management of councils. If the Committee wishes, we could take that as an example and work up something, which we could present at our next meeting. Would that be helpful?

701. Mr McGlone: That would be very useful.

702. The Chairperson: Twenty-two councils have acted within the district fund of between 5% and 7%. That seems to be a good practice and seems to work. Has clause 7 been invoked elsewhere?

703. Ms Broadway: Do you mean has another jurisdiction made similar regulations?

704. The Chairperson: Yes.

705. Ms Broadway: No; there has not been a need to.

706. The Chairperson: Everything is running so smoothly. The fear for the Committee is that the threshold will be exceeded, by which time it will be too late to act. That is a problem, but it could be argued that each individual council will be responsible for how it manages.

707. Mr Beggs: I declare an interest as a councillor on Carrickfergus Borough Council. Mention was made by the Chairperson that four of the 26 councils have gone below the 5% recommendation in the guidance; in fact, one council is at 2.2%. My understanding of that figure is that that council would have to borrow and would incur significant bank costs, because the 5% level is there to show that a council has a monthly cash flow and to allow for eventualities that may occur.

708. Therefore, is the current system working, if some councils have a district fund balance of as little as 2.2%?

709. Mr Small: The key point about what we are intending to do later on through regulations is that this is about guidance. That guidance was worked up in 2009 in collaboration and consultation with councils and their finance officers. That was seen as a sensible point at which to raise concerns about whether the balance was below or above the recommended level. Each council has individual needs, and I am sure that one appreciates that a council's balance may be higher than the recommended level if it is anticipating some additional revenue spend. Similarly,

a council may be happy to go marginally below that level for a short period of time before catching up.

710. Mr Beggs: To clarify, are you saying that you want to go with the regulations as well as to build in powers should the regulations not work?

711. Mr Small: Yes; in case a council is found to be acting improperly.

712. Ms Lizanne Kennedy (Department of the Environment): I wish to point out that we are not going with regulations; rather, we are planning to issue guidance on reserves. We are not planning to make regulations.

713. Ms Broadway: As well as that, clause 7(3) requires the chief financial officer to report to the council on the reasons for reserves falling below the minimum in any financial year and the actions considered necessary to prevent a recurrence of that shortfall in the following year. They will, therefore, have to report to the council on the issue.

714. The Chairperson: We received the following correspondence from the chief local government auditor:

"it seems reasonable for the Department to take the powers proposed by Clause 7 but to wait, until say the outcome of the council's financial year to 31 March 2011 before taking a view as to whether regulations under Clause 6 (requirement to maintain reserves) would be appropriate. As I understand, the Department's letter...(in relation to maintain the 5-7.5% balance on the District Fund) has been positively received...and if this non-statutory guidance proves effective, regulation may not be required."

Obviously, that is working at the minute. Does the Department wish to comment further on that?

715. Mr Small: No.

716. The Chairperson: We will move on to clause 8, which deals with the general fund. No issues were raised under clause 8. Does the Department wish to comment on that?

717. Ms Broadway: This clause simply allows for a name change. It replaces the current district fund with a general fund.

718. The Chairperson: Are members happy with the general content of that clause?

Members indicated assent.

719. The Chairperson: Clause 9 deals with the power to establish other funds as the council considers appropriate. I remind members that a number of respondents held the view that funds established under this power should not be treated as controlled reserves. Does the Department wish to comment on that clause?

720. Mr Small: We have clarified that in writing. Through the regulations this year, we are not imposing those kinds of constraints.

721. The Chairperson: Are members happy with the general content of that clause?

Members indicated assent.



722. The Chairperson: Clause 10 deals with the limitation on application of funds. I advise to members that no issues were raised under that clause. Does the Department wish to comment?

723. Ms Broadway: The clause places a limitation on the application of funds so that councils may not apply funds for any purposes not authorised, specifically or generally, in law, and that moneys from trust funds should be applied only as authorised to those specified trusts.

724. The Chairperson: Are members happy with the general content of that clause?

Members indicated assent.

725. The Chairperson: OK, we will leave it at that. Thanks to you and your team. No doubt we will see you again.

21 October 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Roy Beggs  
Mr Trevor Clarke  
Mr Willie Clarke  
Mr Danny Kinahan  
Mr Alastair Ross  
Mr Brian Wilson

Witnesses:

Ms Julie Broadway  
Mr Dickson Holliday  
Ms Lizanne Kennedy  
Mr John Small  
Department of the Environment

726. The Chairperson (Mr Boylan): I invite the departmental officials to come forward. With us today are John Small, head of local government finance policy, and Julie Broadway, Dickson Holliday and Lizanne Kennedy, all from local government branch.

727. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council.

728. The Chairperson: Mr Clarke has also declared an interest. All the rest of us are clear.

729. Clauses 1 to 10 of the Local Government Finance Bill were discussed last week. We will recommence at clause 11, which relates to the power of a council to borrow money. Some Committee members held a view that the Department should issue guidance on borrowing. Would the officials like to respond to that? Obviously, it is key that we have guidance in place.

730. Mr John Small (Department of the Environment): Indeed, Chairman. Guidance is obviously a very important aspect. We will request that councils have regard to the prudential code of the Chartered Institute of Public Finance and Accountancy (CIPFA). It is an extensive document that was revised in 2009 and takes account of the financial turbulence of 2007 and 2008. Additionally, there is CIPFA guidance on treasury management. That could be helpful, and all councils will be required to have regard to it. As the Committee will see, we have also developed

departmental guidance on borrowing. We have consulted with the key stakeholders and will continue to develop that further best practice guidance before it is finalised.

731. The Chairperson: Are members happy enough with the Department's response?

Members indicated assent.

732. The Chairperson: Are members happy with the general content of the clause?

Members indicated assent.

733. The Chairperson: Clause 12 relates to the control of borrowing and the breach of limits. Some respondents deemed that there should be a stated requirement for the chief financial officer to report to the council on the review of the affordable borrowing limit. That seems like a bit of common sense.

734. Mr Small: Clause 13(1) requires councils to keep the affordable borrowing limit under review, so that is catered for already.

735. The Chairperson: Are members happy enough with the Department's response and content with the clause?

Members indicated assent.

736. The Chairperson: Clause 13 is the duty of a council to determine and review the affordable borrowing limit. One respondent stated that regulations need to allow councils to borrow to finance any unfunded capital balances that are extant at the commencement of the regulations. Would the Department like to comment?

737. Mr Small: It is difficult to see how you could look at the borrowing limit and a council's overall commitment without taking existing borrowing into account. Perhaps there has been a loss of understanding, and we may follow that through with the particular council later. It is difficult to see how that would be a sensible suggestion.

738. The Chairperson: You can clarify that for that council. Are members content with the Department's response? Are we content with the general content of the clause?

Members indicated assent.

739. The Chairperson: Clause 14 relates to the imposition of borrowing limits. A couple of issues were raised in respect of this clause. Most respondents stated that the Department's power to set a limit on borrowing by a particular council should be restricted to circumstances in which the council has disregarded its duty or obligation under clause 13. Does the Department have any comments to make?

740. Mr Small: The imposition of a borrowing limit would only happen in an extreme situation in which there are either serious economic difficulties generally or if, on the control front, broad issues have arisen in respect of the way in which a council operates its borrowing limit.

741. Mr Beggs: I have a query. There is going to be general guidance for councils to set their own limits, and then there is the ability to impose limits if deemed necessary. Could the latter be akin to shutting the door after the horse has bolted?

742. Mr Small: Well it could, but it depends on the particular circumstances. There could be a situation in which a project is still on-stream and has not had borrowing taken, in which case it would not be after the horse has bolted.

743. Mr Beggs: I suppose the primary responsibility rests with the councils, and thereafter you would impose restrictions.

744. Mr Small: Indeed, and the councils will be aware of local government audit, so these sanctions will act as a deterrent.

745. The Chairperson: The second issue is that some respondents sought a definition of "national economic reasons". Could you clarify or give an example of that? It is good to have it in, but we would like some outline of what it involves.

746. Mr Small: It is not feasible to determine; it is in the eye of the beholder. However, we are clearly talking about various situations. It would probably not be something that the Department of the Environment would be involved in; it would probably be a central government decision that would be driven by the Department of Finance and Personnel (DFP) against a really serious national economic situation.

747. Mr Kinahan: Would we, as a Committee, have a say in it? We would have to be consulted as well.

748. The Chairperson: Yes, we would have to be consulted.

749. Ms Julie Broadway (Department of the Environment): The Committee would be consulted on the regulations anyway, before they are made.

750. The Chairperson: That is a very valid point; perhaps we should look into having a power to consult with the Committee in respect of that. I read it last night, but there are no practical examples.

751. Are members content with this clause?

Members indicated assent.

752. The Chairperson: I advise members that there were no issues in respect of clause 15, which relates to temporary borrowing.

753. Ms Broadway: Clause 15 provides for the effect on councils' borrowing limit of payments owed to a council but not yet received by it, and it ensures that outstanding payments are taken into account when setting the borrowing limit and that the subsequent receipt of those payments will have no further effect on the borrowing limit.

754. The Chairperson: Are members happy with the general content of this clause?

Members indicated assent.

755. The Chairperson: I remind members that there were no issues raised under clause 16, which relates to the protection of lenders.

756. Ms Broadway: That clause provides for the protection of lenders who are not required to enquire whether a council can afford to borrow, so that they will not lose out as a result.

757. The Chairperson: Are members happy with the general content of the clause?

Members indicated assent.

758. The Chairperson: Clause 17 relates to credit arrangements giving rise to liabilities. I remind members that some respondents recommended that trade creditors should be excluded from the definition of a credit arrangement, as they are part of the working capital requirement and not long-term debt. Could officials expand on that, just to make it clear for members?

759. Ms Lizanne Kennedy (Department of the Environment): The intention of this clause is to ensure that any credit arrangements that are for capital assets are considered as borrowing, if councils are setting their borrowing limit.

760. The Chairperson: Gentlemen, are you content with the Department's response?

761. Mr Beggs: We need to make sure that, for example, provision is made for considerable sums of money for completing council-owned landfill sites and that that is not discounted in some way, so I am content with what is being proposed.

762. The Chairperson: Are members happy enough with the Department's response to that second issue?

Members indicated assent.

763. The Chairperson: I remind members that some respondents sought clarification on whether long-term liabilities associated with the closure and aftercare costs associated with landfill sites would be treated as credit arrangements for inclusion when determining the affordable borrowing limit. I remind members that the Department has stated that the treatment costs of landfill sites need to be further explored. Can officials comment on that, please?

764. Mr Dickson Holliday (Department of the Environment): The Bill does not make specific provision for special treatment of the closure and aftercare costs of landfill sites, and we recognise that those are substantial long-term liabilities for the councils. Councils need to obtain realistic estimates of those costs as part of their total estimated income and expenditure, and they need to make provision for those in their annual budget. Those costs will be divided between capital costs, which are for putting in the infrastructure that is needed to treat the products of a landfill site after it has been closed, and the revenue costs for operating and maintaining that. As my colleague Lizanne Kennedy mentioned, a credit arrangement could be entered into for capital costs. That would be for installing the equipment that is required for that, and it would need to be taken into account by the council as part of its overall implementation expenditure.

765. The Chairperson: To clarify, what element of the Bill will impact on landfill sites that have been used and, two years later or at some other time, are closed over and deemed to be contaminated? Who will recover the cost? Is it the landowner or the council, or where will the responsibility lie?

766. Mr Holliday: Officials from the Northern Ireland Environment Agency and the Department's environmental policy division have been working with the councils concerned, and I am aware that some sites have fallen into that category. Colleagues from the Department are working with those councils on that matter.

767. The Chairperson: Are members content with the Department's response and with the general content of the clause?

Members indicated assent.

768. The Chairperson: Clause 18 deals with control of credit arrangements. No issues have been raised under this clause.

769. Ms Broadway: This clause prevents a council from entering into or varying a credit arrangement if it breaches the borrowing limit determined under clauses 13 and 14, and it provides for the value of the credit arrangement.

770. The Chairperson: Are members happy with the general content of that clause?

Members indicated assent.

771. The Chairperson: Clause 19 is about capital expenditure. I remind members that no issues have been raised under this clause.

772. Ms Broadway: This clause defines capital expenditure as expenditure that falls to be capitalised in accordance with proper practices. Under the clause, the Department will have the power to vary the definition of capital expenditure to include or exclude types of expenditure to be treated as capital expenditure by individual councils by direction or, more generally, by regulation.

773. The Chairperson: Are members content with the general content of the clause?

774. Mr Beggs: Are you saying that you might exclude as a capital item the likes of a new long-term software system?

775. Ms L Kennedy: That is already included in the regulations.

776. The Chairperson: Are members content with the general content of the clause?

Members indicated assent.

777. The Chairperson: Clause 20 deals with capital receipt in respect of the disposal of an interest in a capital asset. I remind members that no issues were raised under that clause.

778. Ms Broadway: This clause defines capital receipt as the sum that is received by a council when disposing of an interest in a capital asset. An asset is a capital asset if, at the time of disposal, expenditure on the acquisition of the asset would be capital expenditure. Under clause 20, the Department has the power to specify in regulations that a receipt or part of a receipt shall be treated as being or not being a capital receipt.

779. The Chairperson: Are members content with the general content of the clause?

Members indicated assent.

780. The Chairperson: Clause 21 is about non-money receipts. I remind members that no issues were raised under clause 21.

781. Ms Broadway: This clause gives the Department the power to make regulations where a disposal has been made for a consideration that is not wholly in the form of money payable to the council.

782. The Chairperson: Are members content with the general content of the clause?

Members indicated assent.

783. The Chairperson: Clause 22 deals with the use of capital receipts. I remind members that the majority of respondents stated that there should not be a requirement for capital receipts to be applied in the first instance against any money borrowed by a council for the purposes of acquiring that asset. Some respondents also regard the Department's power to make regulations about the use of capital receipts as contrary to the concept of giving local authorities the freedom to manage their own financial affairs.

784. Mr Small: The draft regulations, which you have seen, provide quite wide possibilities in the area of capital receipts. There are five: to meet capital expenditure; to repay the principal of any amount borrowed; to pay a premium charge in relation to any amount borrowed; to meet any liability in respect of credit arrangements; and to make all parts of a payment to a person where the obligation to meet that payment arises on the disposal of an asset. That is the full gamut of possibilities, and I think that that meets the questions that were asked.

785. The Chairperson: Are members happy with the content of clause 22?

Members indicated assent.

786. The Chairperson: Clause 23 deals with the power to invest. Some respondents commented on the lack of departmental guidance on investments. One respondent sought clarification on any restriction on the types of assets to be invested in. We have received the guidance, and it will be forthcoming before this all goes about.

787. Mr Small: Indeed.

788. The Chairperson: Does anyone have any further comments?

789. Mr Small: From what he said, I thought that the Chairperson gave the accepted line that we would take; perhaps I should expand. With the passing of responsibility, we will require the councils to have regard to the CIPFA regulations, the Prudential code, the Treasury management regulations and our own guidance. That would be the basis for ensuring that they have considered the best practice guidance.

790. The Chairperson: That is why I was seeking clarification. It is important that the regulation and guidance are in place and that there is an understanding. As we have seen in previous Bills, guidance notes have not been provided and have not been seen.

791. Ms L Kennedy: The guidance on the investments has been provided to you.

792. The Chairperson: I was seeking clarification. Are members content with clause 23?

Members indicated assent.

793. The Chairperson: Clause 24 deals with security for money borrowed, etc, and the appointment of a receiver. In relation to clause 24(8) and 24(9) concerning the appointment of a

receiver in respect of unpaid council borrowings of no less than £10,000, the Assembly's Examiner of Statutory Rules suggested that the Committee may wish to press the Department to make the power of substituting a different amount subject to draft affirmative procedure, as an Order under that provision would bring about a direct amendment of the Bill in respect of the jurisdiction of the High Court. Although the Department has indicated that there are no immediate plans to exercise the power, the Examiner considers that as and when the powers are exercised, they should, perhaps, be subject to a high degree of Assembly scrutiny. It is appropriate that the Committee has an opportunity to scrutinise that.

794. Ms Broadway: If the Committee is content that the level of scrutiny should be changed, we can bring the matter to the Minister to suggest that an amendment be taken forward at Consideration Stage to make the enabling power subject to draft affirmative procedure.

795. The Chairperson: Could we see that amendment?

796. Ms Broadway: Yes.

797. The Chairperson: Do members agree to advise the Department that the Committee would like to have sight of the text prior to formal clause-by-clause consideration?

Members indicated assent.

798. The Chairperson: Clause 25 concerns guidance. I advise members that no issues were raised about the clause.

799. Ms Broadway: The regulation requires a council to have regard to guidance that is issued by the Department and to any other guidance that is specified in regulations when exercising its functions under Part 1 of the Bill.

800. The Chairperson: Are members content?

Members indicated assent.

801. The Chairperson: Clause 26 concerns the derating grant. I advise members that no issues were raised about the clause.

802. Ms Broadway: This clause makes provision for the derating grant, which will replace the derating element of the general grant. The formula for calculating the amount of the derating grant will be the same as that for calculating the derating element of the general grant.

803. The Chairperson: Do members have any comment to make about clause 26? Are members content?

Members indicated assent.

804. The Chairperson: Clause 27 concerns the rates support grant. I refer members to correspondence from the Association of Local Government Finance Officers (ALGFO) that comments on the statutory formula and the need to ring-fence the rates support grant. Members should note that Moyle District Council supported the ALGFO paper.

805. Some respondents contended that the current statutory formula that is used for the allocation of resources grant needs to be reviewed immediately to confirm that it will continue to meet its objectives following the review of public administration (RPA). Obviously, this issue is

very important to local councils. The grant was reduced in this financial year, and it is possible that that will happen again. Is that correct?

806. Mr Small: The key point is that the clause does not change the approach, methodology or levels of either of the current elements of the general grant. That is a separate financial issue that is, perhaps, relevant to the spending review and its outworkings.

807. The Chairperson: For clarity, is it correct that some resource grant funding was removed this financial year?

808. Mr Small: Yes.

809. The Chairperson: Given that that was done in the middle of a financial year, is it correct that local councils will only be able to address that imbalance in the next financial year?

810. Mr Small: Yes, or they could reprioritise. However, what we are saying does not affect that at all.

811. The Chairperson: Local councils are asking for that funding element to be ring-fenced, rather than losing that amount every year. Are we saying that it will be ring-fenced?

812. Mr Small: It is not really ring-fenced; it is separated. There is no question of those elements being treated differently to how they are now. If there is a general financial pressure, one or other of those may be affected, but that is not the intention, nor is it in any way relevant to the Bill.

813. Mr Beggs: Presumably, if consideration were given to reviewing or changing that calculation, there would have to be a detailed consultation process, which would be outside the scope of the Bill. Is that correct?

814. Mr Small: That is correct. It would be quite complex.

815. Ms Broadway: Also, we would need a change to regulations, which would be draft affirmative. Therefore, that formula could not be changed unless the Assembly debated the matter.

816. The Chairperson: So it will not be changed?

817. Ms Broadway: The formula will not.

818. The Chairperson: Obviously, post-RPA, there may be changes that councils need to undertake.

819. Ms Broadway: The need to amend that will be kept under review. However, we could not amend the formula unless we brought forward draft affirmative legislation. Before an amendment could be made, it would be brought before the Committee and would require an Assembly debate.

820. The Chairperson: OK. Thank you. Are members content?

Members indicated assent.



821. The Chairperson: Some respondents expressed the view that the rates support grant should be ring-fenced as it enables councils to plan their estimates. Ring-fencing would also mean that councils would not have to contend with in-year cuts, which are difficult to manage as rates have already been set.

822. Mr Small: As I already said, the Bill does not suggest ring-fencing that, nor would it be in any way relevant to do that. It is simply a matter of what finances are available to us in the normal, wider financial and budget situations.

823. The Chairperson: Obviously you can see why the councils have asked for ring-fencing. Without it, there will be an impact on some of the smaller councils.

824. Mr Small: Yes, but the budget process supersedes all of that. That is what money we have available to us and the Bill will not affect that in any way. Perhaps I should be saying that the level of the finance will not be affected by the Bill, nor will the formula and the methodology by which it is applied.

825. The Chairperson: Ring-fencing will prevent in-year cuts. The resource grant was taken away from councils last year, and if that continues to happen, smaller councils will have to recover the funds in the next financial year to address that imbalance. Some of the respondents said that they want that amount ring-fenced, but you said that that cannot be done due to budget pressures. However, in support of the councils, I think that that money should be ring-fenced at all costs. Would you like to comment on that?

826. Mr Small: That cannot be guaranteed because of greater budget pressures.

827. The Chairperson: I understand that, but how will you protect the smaller councils?

828. Ms L Kennedy: To clarify, there is a pot of money and the Bill and the regulations under the Bill use the formula to divide up that money, with each applicable council receiving a certain ratio. This year, some councils got nothing out of it, while the other 18 councils got a certain amount of money. If 5% comes out of the pot of money, each of the councils that get money would receive 5% less.

829. The Chairperson: I totally agree and understand what you are saying. However, the councils are asking for that pot of money to be ring-fenced.

830. Ms L Kennedy: That is outside of the Bill.

831. The Chairperson: I understand that. However, the only way for the councils to recover that is to increase the rates in the next financial year, and that is a problem for them. It is the Minister's intention to put that back on the councils. The Committee and the respondents are calling for that pot to be ring-fenced, but you are saying that that cannot be done.

832. Mr T Clarke: I declare an interest as a member of Antrim Borough Council.

833. The Chairperson: OK; thank you. Would you like to respond to that?

834. Mr Small: I did not quite catch that; I am not sure.

835. The Chairperson: No, that is OK. He was just declaring an interest. He has three or four jobs. [Laughter.]

836. Mr T Clarke: I am capable of doing them all.

837. The Chairperson: So, what you are saying is that it is the budget process that affects everything. If the pot of money is reduced by 5%, the money that goes to councils will reduce by the same amount. Hopefully, the Department will retain the same amount of money for the local council resource fund, but you said that that you cannot guarantee that.

838. Mr Small: That is correct.

839. The Chairperson: On behalf of the councils, will you please do that? [Laughter.]

840. Moving on, some respondents expressed concern that clause 27(6) suggests that the amount payable as the rates support grant could be calculated as nil. Would you like to comment on that?

841. Mr Small: That follows on from what my colleague Lizanne just said. That provision does not mean that the grant would be nil. Rather, it reflects that, under the current system, eight of the 26 councils do not receive any funding in that area, as their wealth base is considered by the formula to be sufficient for their needs. Again, that provision will not change anything.

842. The Chairperson: OK. So, those 18 councils will continue to receive that funding. Will the formula be reviewed?

843. Ms Broadway: The formula is kept under review. We would review it in the run-up to reorganisation. Some work has already been done on whether the formula needs to be reviewed before a move to 11 councils. It will be kept under review.

844. The Chairperson: Before we move on, can I not get you to commit to ring-fencing the grant? [Laughter.] It is something for the Committee to consider. Some of the councils lost, perhaps, £120,000 of resource. Those of us who have served on local councils know that that is a lot of money for small councils to lose in a year. Members need to consider that. Perhaps we need more information.

845. Mr Beggs: I appreciate what you are saying, Chairperson. It is important for good governance in local government that there is early clarity of the situation. In previous years, the information that came from Land and Property Services about the ability of councils to raise rates — the penny product, etc — varied dramatically in the weeks approaching the critical rating decision budgeting period. It is very important to have clarity at an early stage.

846. The Chairperson: As is ring-fencing the budget. It is an important issue. Are members content with the clause, or do we need more information? Is the Committee happy with the response from the departmental officials?

847. Mr Beggs: I am content that the issue is outside of the scope of the Bill.

848. Mr W Clarke: We need to look in more detail at the formula and how it is rolled out. Obviously, deprivation levels in rural areas would be taken into consideration. If Newry and Mourne District Council joins with Down District Council, that would create a massive rural council. Those matters would have to be taken into account, but that is a separate job of work. It is not just small councils that would be affected. There are a lot of other issues.

849. The Chairperson: Will the Department carry out a consultation before cuts are made? As Mr Clarke suggested, we need to look at rural-proofing. The Committee has heard the views of

respondents. We need to look at the impact of the grant falling, even by 5%, on the 18 councils or whoever is entitled to it currently. That is an important issue for the Committee.

850. Ms Broadway: That is separate from the Bill. We could bring more information about that to the Committee.

851. The Chairperson: Yes. Was an equality impact assessment (EQIA) carried out?

852. Ms Broadway: Yes; an EQIA is undertaken every time the formula is reviewed.

853. The Chairperson: OK. And rural-proofing, of course.

854. Ms Broadway: Yes, all impact assessments.

855. Mr Beggs: It would be helpful if the formula and the EQIA were brought to the Committee so that members are aware of them.

856. The Chairperson: We are happy with the general content of the clause, but we need that information before we commence the formal clause-by-clause scrutiny.

857. Clause 28 concerns reductions in grants under section 26 or 27. Members expressed the view that care must be taken when breaking down the general grant funding into the derating grant and the rates support grant that councils do not lose grant aid, as that would have an impact on rates.

858. Mr Small: I have given the assurance that the Bill does not affect any level of grant. It is a clean split; it is exactly the same as it was.

859. The Chairperson: OK. Are Members content?

860. Mr McGlone: What effect, if any, have you assessed of the Budget? I was watching the TV last night and I saw that local government figured very prominently in the directions of the Chancellor.

861. Mr Small: Just before you came in, Mr McGlone, we —

862. Mr McGlone: Sorry, excuse me; I was late. I had another appointment.

863. Mr Small: We were just saying that any cuts to levels would be subject to the outcome of our Budget process and of yesterday's announcement.

864. The Chairperson: Are members content with the general content of the clause?

Members indicated assent.

865. The Chairperson: Clause 29 concerns other grants to councils. No issues were raised in respect of the clause.

866. Ms Broadway: Clause 29 extends to all Departments the general power to pay grants to councils. At present, another Department can only pay grants directly to councils when they have an express power in their own legislation to do so. However, grants are sometimes paid when legislation is not necessary. In those cases, payments are made through the Department of the Environment, which means that we are making payments in respect of policies that are

not our responsibility. Internal audit raised concerns at that practice, and the power in clause 29 seeks to rectify that situation.

867. Mr W Clarke: For clarity, is that about grants from different Departments for things such as childcare provision?

868. Ms Broadway: Because issues were raised by internal audit, we now only pay one grant on behalf of another Department. That is a DFP policy on construction products, which we pay to councils on behalf of that Department. Internal audit queried that because we are paying out grants for something on which we have no policy lead. Clause 29 will rectify that.

869. The Chairperson: Are members happy with the general content of clause 29?

Members indicated assent.

870. The Chairperson: Clause 30 deals with payments due by councils to Departments, etc. No issues were raised about that clause, but the Department may wish to comment.

871. Ms Broadway: Clause 30 provides for the deductions from grants. It will apply when councils owe money, under a statutory provision, to a Northern Ireland Department or public body; to the consolidated fund; or to a public fund under the control of a Northern Ireland Department or public body. The clause carries forward, without amendment, the current provisions in section 145 of the Local Government Act (Northern Ireland) 1972. It has been included in the Bill because the Bill is trying to pull together and consolidate all issues of payments to and from councils. There will be no change in policy.

872. Mr Kinahan: Should there be an early warning system for councils in this case? That would allow them a little bit of leeway of, perhaps, six months. From my brief time in council, I got the impression that things are thrown at councils very quickly; perhaps we should look at some way of ensuring that they know in advance what is happening.

873. Ms Broadway: We can take that away and look at it.

874. The Chairperson: The Committee appreciates that. We will look at that information during the formal clause-by-clause scrutiny of the Bill. Are members happy with the general content of clause 30?

Members indicated assent.

875. The Chairperson: Clause 31 deals with allowances, etc for councillors. I remind members to declare interests as we talk through the clause. Committee members expressed the view that payments should be flexible to accommodate those who wish to make a career out of local government and for those who wish to take on the position on a part-time basis, while retaining their full-time job. Would the Department like to comment on clause 31?

876. Mr T Clarke: I declare an interest as a member of Antrim Borough Council.

877. Mr W Clarke: I declare an interest as a member of Down District Council.

878. Mr Beggs: I declared an interest at the start of the session; I do not see why you want me to do it again.

879. The Chairperson: I am just reminding members. I do not want to be giving you more money than you are already getting.

880. Ms Broadway: Clause 31 re-enacts the current provision that enables the Department to make regulations about allowances that are payable to councillors and to determine the maximum amount payable for each allowance. The only new provision that the clause will make is that it will enable the Department, in the interests of transparency, to make regulations requiring councils to make and publish their scheme of allowances and to make that available to members of the public.

881. The issue of payments to councillors being flexible, to accommodate those who wish to make a career from local government and those who wish to do it on a part-time basis, was looked at by the councillors' remuneration working group when it was making its recommendations about allowances to councillors. It considered that there should be no expectation that the role should be full-time. It was important to ensure that no restrictions were placed on who could be a councillor, whether they be in full-time or part-time employment, unemployed, self-employed or retired, because having people from different backgrounds with various experience and skills means that the council truly represents the district. Therefore, there is no expectation that the role should be full-time.

882. The Department sets the maximum for each allowance. The flexibility is there for each council to decide how much to pay in each of the allowances and to decide which posts and responsibilities will attract the special responsibility allowance.

883. Mr Kinahan: Does the Department recommend a way for the councils to publish those details? Everything was put in local papers in Antrim as if it was all expenses and, therefore, going into the pockets of councillors, rather than detailing the allowances for being chairpersons and so on.

884. Mr T Clarke: Is that because your party colleague received two-and-a-half times more than anybody else?

885. Mr Kinahan: It was a whole lot of people.

886. Mr T Clarke: I realise that your party colleague received two-and-a-half times more than anybody else.

887. Mr Kinahan: We need to make sure that we clarify what is expenses and what is paid for other things.

888. Ms Broadway: That is fine. We can issue a circular.

889. Mr W Clarke: The role of councillor is increasingly becoming a full-time position. I suppose it depends on how seriously councillors take their position. There are a lot more daytime meetings because of European directives on officers' working conditions, to ensure that they have quality of life with their families. With outside bodies, policing partnerships and community safety organisations, never mind the community groups that people are members of, the job is at least 40 hours' work a week. Attendance at the Assembly is on top of that. If we are going to provide quality representation for people, it will move towards a full-time position.

890. Ms Broadway: When the remuneration panel is set up, it could be asked to look at whether we are moving towards a situation in which the role may be more full-time. We suggest in the regulations that the basic allowance should be the same for all councillors because they all fulfil

the same role. However, that is something that the Minister may choose to ask a remuneration panel to look at.

891. Mr W Clarke: That is what I am trying to get at. The basic amount of money is the same, but all councillors are not fulfilling the same role. Some councillors do a lot more, so there should be some sort of sliding scale in that regard, perhaps according to how many hours councillors do. A minimum amount of hours and a sliding scale need to be looked at in regard to payments.

892. Mr McGlone: How do you do that?

893. Mr W Clarke: If someone is a member of so many outside bodies and they attend them —

894. The Chairperson: It is a very valid point.

895. Mr T Clarke: I agree wholeheartedly with what has just been said. The Department made a mistake in the past and made a rod to beat its own back. In the past, councillors were paid an attendance allowance for meetings. Now, every councillor gets the same amount of money whether or not they attend meetings. Some councillors get remuneration for doing nothing while others get the same amount as those who do nothing. The Department made a mistake by removing the attendance allowance. I disagree that it is a full-time job; it is still part-time. In your initial remarks you touched on the idea of people doing the job on a part-time basis, but you changed slightly when you talked about the review recommending that the jobs become full-time. I cannot see it. I have been on a council for five years and have attended most meetings, even though I am a Member of the Assembly. I agree with Willie Clarke: some investigation should be done in that regard. I put on record that the Department made a mistake by removing the attendance allowance.

896. Mr McGlone: To be fair to the Department, that is an imponderable task. To be honest with ourselves, we need to ask whether attendance at Committees is a benchmark for a good community activist.

897. Mr Kinahan: Not necessarily.

898. Mr McGlone: No, not necessarily. If all of us around the room are being honest, it is not. Somebody who attends committee meetings regularly could well be a vigorous and active councillor. However, it would be difficult to quantify the activity of a councillor who is out day and daily with community groups on the ground, filling in DLA forms and so on; that person usually winds up topping the poll. To be fair to the Department, it would be difficult to even try to assess that. The general answer is that that decision is, ultimately, left to democracy. I know that it is an issue, but it would be very difficult for anybody in the Department to assess or quantify that.

899. The Chairperson: Clause 35 deals with a panel to advise on payments to councillors. Perhaps, when we get to that clause, we can discuss the issue. However, are members content with the general content of clause 31?

Members indicated assent.

900. The Chairperson: Clause 32 relates to allowances for chairpersons and vice-chairpersons. Members expressed the view that consideration is required of the position of officers within councils and their remit around financial transparency.

901. Ms Broadway: With regard to the query about transparency, the strategic leadership board endorsed the recommendation from the policy development panel on governance and relationships that the remuneration of senior council officers should be reported in a council's annual statement of accounts. Under article 24 of the Local Government (Northern Ireland) Order 2005, we have the power to do that through regulations. We could make regulations to stipulate that accounts should include details of senior officers' allowances and payments. Incidentally, last month, guidance was issued in England on local government transparency, which includes the recommendation that the salaries and expenses of senior officers should be published. It is an area in which there is movement.

902. The Chairperson: I am sure that the Committee agrees with that. We are not saying that people are not entitled to this but entitled to that; it is about transparency.

903. Are members content with clause 32?

Members indicated assent.

904. The Chairperson: Clause 33 deals with expenses of official and courtesy visits, etc. Unsurprisingly, no issues have been raised.

905. Ms Broadway: Clause 33 brings forward, without amendment, the current provision around expenses for official and courtesy visits.

906. The Chairperson: So there will be no Learjets or helicopters landing in the forecourts of council buildings.

907. Are members content with the general content of clause 33?

Members indicated assent.

908. The Chairperson: Clause 34 deals with expenses incurred in attending conferences and meetings. No issues were raised on the clause.

909. Ms Broadway: Clause 34 amends the current provision for expenses incurred in attending conferences and meetings by lifting the requirement that expenses have to have been incurred in attending conferences for the purpose of discussing matters connected to the discharge of the functions of the council, the development of trade, industry or commerce in the district, or issues otherwise affecting the district or its inhabitants. Under the amended provision, it will be largely for a council to determine whether, in its opinion, a particular conference would cover matters that relate to the interests of the district or its inhabitants, and to make payments towards expenditure incurred in attending that conference.

910. The National Association of Councillors (NAC) asked that that amendment be made, because there were some concerns that attendance at meetings of its organisation would not be covered.

911. The Chairperson: So long as we ensure value for money and good practice.

912. Are members content with the general content of clause 34?

913. Mr T Clarke: If the amendment is made, is there not a danger that councillors would be rewarding themselves?

914. Ms Broadway: It is up to the council to decide.

915. Mr T Clarke: The council consists of councillors. Therefore, it is, essentially, a case of turkeys voting for Christmas.

916. Ms Broadway: We are suggesting that because that is the situation in other jurisdictions, such as England, Scotland and Wales. We are updating our provision so that it is similar to provisions elsewhere.

917. Mr T Clarke: I do not agree with that reasoning. We are in a position now where councillors can reward themselves further and decide whether they get paid for something. You have given them more control to give themselves more money.

918. Ms Broadway: That recommendation comes from a recommendation from the councillors' remuneration working group.

919. The Chairperson: We should look at that again. I will not make a decision on it today. We need more information.

920. Mr McGlone: I am aware that that issue had cropped up among members of the National Association of Councillors. That was a bit of a glitchy situation in some councils. Can we seek a wee bit of clarification on that, including some from the NAC?

921. The Chairperson: Mr Clarke and Mr McGlone have raised issues with this clause. We will certainly look into those before we decide whether to support the clause.

922. Clause 35 relates to the panel that will advise on payment to councillors. I remind members that one respondent questioned whether the costs associated with the establishment of the panel will outweigh its benefits over the process that is in use. This issue came up during our discussion on clause 31, and there are two separate elements. It will cost £20,000 to set up the panel; how many meetings do we expect to take place? Could you expand on whether that provides value for money, Julie?

923. Ms Broadway: Again, that proposal derives from recommendations from the councillors' remuneration working group, which sees the key benefit as independence. There had been criticism in the past that no independent advice was being provided to the Minister of the Environment about allowances for councillors. Civil servants made those recommendations to the Minister. The panel will be independent of the Department and local government and will provide assurance of impartiality. That is the main reason for setting it up.

924. The cost of the panel has been estimated at about £20,000. However, that will not apply every year. It depends on how many meetings the panel has during the year and on what area of remuneration the Minister has asked the panel to look at. For example, if, in the run-up to reorganisation, the Minister decides to do a full review of councillors' remuneration, it may cost £20,000 in that year. We have worked that out on the basis of having a three-member panel with a chairperson and two members and 30 meetings during the year, and based on the cost of the similar panel in Wales. However, the Minister might target a particular area of remuneration or allowances. For instance, he might decide to look at the issue of allowances for chairpersons and vice-chairpersons, because the 26 councils deal with that issue differently. It might only take a few meetings to decide on that. The panel will not meet every year, so there will not be a cost of £20,000 every year. It will depend on what the Minister has tasked the panel to look at.

925. The Chairperson: So, in essence, it could be £20,000 for one meeting.



926. Ms Broadway: Yes.

927. The Chairperson: I looked at that last night. I know that the panel has to be independent and has to be set up correctly. However, £20,000 could constitute 30 meetings or one meeting. You said that you looked at another model, and you have used that example. It could be argued that you should use that model, do it in-house and look at the proposal under that model. However, you then need to question the independence and whether or not there is proper consultation. I want to thrash that out so that the Committee understands fully the proposals in respect of the panel.

928. Ms Broadway: I will just confirm that the members of the panel would only be paid for the days that the panel met. Therefore, if the panel meets on 30 days during the year, it could cost £20,000. However, if it only met to deal with a targeted area of remuneration, members would only be paid for those days on which the panel meets.

929. Mr W Clarke: I am not sure if this fits here or not, but I have had some experiences in Down District Council to do with the provision of training; perhaps a panel could look at that. We wanted to undergo some training that was available, but, perhaps because we came from a certain political party, the request was rejected by the corporate council, and that opportunity for training was denied to us, but was given in other councils. Could the provision of training for councillors be looked at? Funding for that should be ring-fenced. Money should be made available for councillors to get training for the new responsibilities, such as community planning. For councillors to be denied that training while officers get it is totally wrong. Is there scope within clause 35 to deal with that?

930. Ms Broadway: The panel is only dealing with the allowances paid to councillors, but we could look at that. Part of the task force for the reorganisation of local government included a subgroup that dealt with capacity and training issues.

931. Mr W Clarke: We raised it with them as well, and we did not get anywhere there either. What I am saying is that there is a void until the next RPA. What are we going to do? Are we not going to train councillors? This is an opportune time to build something in. Will you look at that?

932. Ms Broadway: Yes, that is fine. We will go away and look at whether we can include something about that.

933. Mr T Clarke: I would like some more detail about the estimated costs of between £20,000 and £25,000. Although that is your estimate, and you say that it will be spent on a pro rata basis, what is the baseline? How much will members of the panel be paid for the length of time that they work?

934. Ms Broadway: We looked at panels in other jurisdictions to try to compare what payments are made there. The Welsh panel on remuneration, which has recently been set up, pays a daily allowance of around £250 to the chairperson and £200 for each member, so those are the figures that we used for that estimate.

935. The Chairperson: That is why I raised the issue; it is something that the Committee needs to look at. We understand the need for an independent panel to address the issue, but talking about costs like that, especially in the current economic climate, and I cannot say that picking another model or inviting councillors is how you would go about that, but —

936. Mr T Clarke: Your pro rata costs there would be £52,000 a year.

937. Ms Broadway: I accept that. We are saying that we do not think that the panel will be asked to meet for more than 30 days.

938. Mr T Clarke: The point is that your pro rata costs are £52,000 a year. You are not describing what qualities that person has to have, other than immediately disqualifying councillors, which I can understand. However, if you pro rata that out, considering the climate that we are in today —

939. The Chairperson: We need to look at that. We need to go back and discuss what has been decided under RPA proposals and bring it back.

940. Mr Beggs: The departmental written response indicates that the panel's costs have been estimated at approximately £20,000 to £25,000. Just to clarify, you are saying today that the costs could be between zero and £25,000. There is not a £25,000 fixed cost.

941. Ms Broadway: No, there is not.

942. Mr T Clarke: But you are also saying that it could cost £35,000, because it is only an estimate.

943. Ms Broadway: It is an estimate, but it is an estimate of costs calculated on a daily basis. We do not think that it would cost any more than £20,000 or £25,000.

944. Mr T Clarke: But it could.

945. Ms Broadway: Equally, there could be two or three years in which no payment is made to a panel, because it has not been asked to carry out any reviews. It would be only for days on which the panel meets.

946. Mr T Clarke: Would the person getting that £200 a day already be in another job?

947. Ms Broadway: I am not sure.

948. Mr T Clarke: I assume that they would be. That would be enhancing their salary by £200 a day. It is a very topical subject for today.

949. The Chairperson: There is no doubt about that. It is an issue that we need to come back to.

950. The second issue raised was that respondents recommended that all expenses should be supported by appropriate evidence of expenditure in accordance with Treasury requirements. Do you have any comment on that?

951. Ms Broadway: It will be the case that all expenses will have to be supported by evidence of expenditure.

952. The Chairperson: Thank you for clarifying that.

953. Let us get back to the issue related to clause 31. Mr McGlone and Mr Clarke asked how we get to the point, on this very difficult issue, at which councillors are properly representing people. There is no doubt that the job of a councillor has changed, as has the number of meetings that they have to go to. Councillors are either in the community dealing with issues on the ground, or in committee. The role of a councillor needs to be clearly defined. As well as the payment issue, the work of councillors and the definition of that role needs to be looked at.

954. Mr McGlone: That is going to be extremely difficult unless it is done by the Department. The role of a councillor could go from talking some young fella or girl out of taking their own life to trying to get a roof on somebody's house. Councillors are elected community servants for their areas, and people turn to them. To tie down a definition, other than within fairly broad generalisations, would be extremely difficult. We have all been there and we all know that.

955. Ms Broadway: When the councillors' remuneration working group considered the issue, one thing that it tried to do was benchmark the role of councillors against other professions. It came to the conclusion that that was impossible.

956. The Chairperson: I totally agree. That is the clear message that we should be getting out to the public. A councillor wins or loses their seat depending on what they do. I agree with Mr McGlone that a definition should be looked at from a broad perspective, because what a councillor is asked to do covers a wide expanse. However, councillors represent their constituents by attending committee meetings on their behalf, or by dealing with specific issues out on the ground. We need to look at the role of councillors. Perhaps the word "define" is wrong. However, we need to look it broadly, and that needs to be taken on board.

957. Ms Broadway: If a panel were looking at the basic allowance payable to councillors, it would need to look at all the various aspects of the work that councillors are involved in.

958. The Chairperson: Mr Clarke raised the issue of somebody with full attendance getting paid £9,500 or £10,000, but somebody with 50% attendance getting the same amount. Although that councillor may be working in the community —

959. Mr Kinahan: He may be working harder outside the committees.

960. The Chairperson: That is what I am saying. However, if a pay limit for certain jobs is going to be set within councils, that needs to be looked at in the round.

961. Mr Kinahan: Can I throw the matter of pensions into the pot? It may not be popular, but it is an important issue for people who have served on councils for 20 or 30 years. If there is an independent panel, it should look at that end of things too.

962. Ms Broadway: The councillors' remuneration working group recommended that councillors should be able to become part of, for instance, the local government pension scheme. We are looking at producing regulations that would allow that.

963. The Chairperson: I tried to get remuneration for my two-and-a-half years, but Arlene Foster did not buy it. I tried my best.

964. We need to look at the matter in the round and take on board all of the members' comments before we make a decision.

965. Clause 36 concerns interpretation. No issues were raised —

966. Mr W Clarke: Chairperson, I am sorry for bringing you back to clause 35, but, obviously, there will be people who will not be allowed to sit on the panel. How will that panel be appointed?

967. Ms Broadway: The regulations specify that councillors and current elected representatives will not be able to be members of that panel.

968. Mr W Clarke: What about their families?

969. Ms Broadway: It does not say anything about that.

970. Mr W Clarke: That could create vested interests.

971. The Chairperson: We need to see the proposals in the round before we consider that further.

972. Mr Beggs: Am I right in presuming that clause 36 allows someone who is not a councillor to be considered to be a councillor in relation to payment?

973. Ms Broadway: It is only for the purposes of the payment of expenses.

974. Mr Beggs: It seems quite unusual that someone who has not been elected a councillor can be considered a councillor for payment. Will you elaborate and give us an example of why that is needed?

975. Ms Broadway: I will come back to you about that.

976. The Chairperson: Do members have any other comments? Are members content with the general content of clause 36, taking on board the view that Mr Beggs expressed?

Members indicated assent.

977. The Chairperson: Clause 37 concerns payments for special purposes. Several respondents requested a review of the current limits on expenditure for special purposes as they consider them to be too low.

978. Ms Broadway: Clause 37 brings forward without amendment the existing provisions that permit councils to make payments for special purposes. Some groups indicated that a review is needed of the limits on expenditure for special purposes. As background, there are links between the section 115 power and well-being. The intention was to remove the section 115 power on the introduction of well-being. The aim was to have the Local Government Finance Bill in place from 1 April 2011 and to have the Local Government Reorganisation Bill, which would bring in well-being, six weeks later. We did not feel that it was necessary to uplift that amount for that six-week period. However, given that decisions have yet to be made about the time for reorganisation, there may be merit in looking at whether the level needs to be uplifted in the interim. That is something that we could consult on and do by subordinate legislation. There is a power in section 37 that allows us to change that amount by subordinate legislation. If the Committee feels that we should do that, we could take that back to the Minister.

979. The Chairperson: I think so. We also need some research on examples. The principle seems OK, but we need to take a look at it. Perhaps Research and Library Services could do a bit of work on that and provide us with some other examples before we make a decision. Are members happy enough that we do that before we make a decision on the clause?

Members indicated assent.

980. The Chairperson: Clause 38 concerns restrictions on power to make payments under section 37. Two respondents suggested an amendment to clause 38(1), so that it would read: "A council shall not make any payment under section 37 unless, in its opinion, the direct benefit

accruing to its district or any part of its district or to the inhabitants of its district or any part of its district will be commensurate with the payments to be made."

981. Ms Broadway: The provision is linked to clause 37. The Department does not consider that amendment to be necessary given that clause 37 already gives councils discretion as to whether a payment is for a purpose that would bring a direct benefit to the council, to its district or any part thereof, or to inhabitants of the district. Therefore, we are not sure that adding "in its opinion" is necessary.

982. The Chairperson: Are you saying that that is clearly covered in clause 37?

983. Ms Broadway: Yes.

984. The Chairperson: OK. Are members content with the general content of the clause?

Members indicated assent.

985. The Chairperson: Clause 39 deals with public appeals. I remind members that two respondents suggested that the clause should be amended to replace "particular event" with "circumstances".

986. Ms Broadway: The Department does not consider the proposed amendment to be necessary. The purpose of that provision is to allow councils to make one-off payments associated with particular events; changing it to "circumstances" may extend that.

987. The Chairperson: It is wide-ranging. It could be a complicated process. Are members happy enough with the general content of that clause?

Members indicated assent.

988. The Chairperson: Clause 40 is entitled "Limit on expenditure under sections 37 and 39". There are no issues with clause 40.

989. Ms Broadway: The clause re-enacts the current provision that limits expenditure for special purposes and public appeals.

990. The Chairperson: Are members happy enough with the general content of the clause?

Members indicated assent.

991. The Chairperson: Clause 41 deals with subscriptions to certain local government associations and other bodies. I advise members that issues have been raised under clause 41.

992. Ms Broadway: Clause 41 re-enacts section 111 of the Local Government Act (Northern Ireland) 1972, which deals with subscriptions to certain local government associations and other bodies. One amendment has been made to section 111 to respond to comments made during the consultation on the Bill. We decided that provision should be made to clarify that a council may pay for an officer's membership of a professional body where membership of that body is considered necessary or beneficial to their carrying out their duties. However, it is limited to one membership payment per officer.

993. Mr T Clarke: Is that still an annual payment?

994. Ms Broadway: It is an annual payment. For instance, it might be considered necessary for a person to be a member of an accountancy body or another body that is related to the function that they carry out in the council.

995. Mr T Clarke: A few weeks ago, the Northern Ireland Local Government Association (NILGA) recommended that each council should have a chief finance officer, who, it suggests, should be a member of some bodies. It directs people to such memberships before they can hold certain posts. If we agree to this clause, a wee empire will be created for a person employed by the council, by ensuring that their membership is paid by the council. Given the salaries of some of those senior officials, I do not see any reason why they should not pay for their own membership of whatever bodies they want to be on. If they need to be on that body to be employed in that post, so be it; why should the ratepayer pay for it?

996. The Chairperson: I agree with that in principle. Councils should have a properly qualified person to do the job. If the membership is for training or something similar, that is a different matter than paying them to sit on a body.

997. Ms Broadway: It is really about membership of a professional body, such as, for instance, an accountancy body. If part of a council officer's job requires them to have qualifications as an architect or membership of certain bodies —

998. Mr T Clarke: That is an enhancement. Before people got those jobs, they had to be a member of that body. Therefore, they paid for it before they got on the local council. Then, because they got the job on the local council, the council picks up the tab. That is an enhancement to the salary.

999. The Chairperson: Is that the substance of the amendment?

1000. Ms Broadway: That amendment was made as a result of responses that we received during consultation on the Bill. That provision was not originally in place.

1001. The Chairperson: The Committee will have to review that.

1002. Mr McGlone: The amendment is that a council "may pay"; there is no obligation on a council to do that. Therefore, it will kick it back to individual councils.

1003. Ms Broadway: It will.

1004. The Chairperson: I agree, but, to be honest, "may pay" will mean that they will pay. Once a request comes through, corporate council will agree to it. That might well happen through a letter at the end of a meeting when everybody is looking to get out the door.

1005. Mr McGlone: It might be useful to find out whether any councils already do that and for what range of posts. It could be happening ad infinitum or it could involve only two or three people. We do not know.

1006. Mr T Clarke: Chairman, the difficulty is not with stopping that one payment but with continuing the practice. At the minute, the status quo is for some payments to be made. However, to continue that, and to open it up to everybody else — one membership a year per officer — would mean that the council would pick up the tab.

1007. Mr McGlone: We may find that one council is paying for two officers to sit on bodies and another is paying for 10 officers. Straight off, there will be councils asking why others councils

are doing something that they are not. If we had a greater level of detail, it would inform our consideration.

1008. The Chairperson: To be honest, I think that that is why the amendment was sought in the first place. However, we will look at the issue. The Committee definitely need to come back to that before making a decision.

1009. Mr Kinahan: What happens in the world of private business? Do people pay for membership themselves? If membership is paid for people by their companies, councils should pay too.

1010. Mr T Clarke: The two cannot be compared. We would have to look at the rest of the package.

1011. Mr Kinahan: I would like some guidance.

1012. Mr T Clarke: That cannot be taken in isolation. The roles would have to be compared. Civil servants are particularly well looked after when it comes to sickness and so on, whereas people in the private sector may not be. You cannot directly lift that example from private business and take on its own.

1013. The Chairperson: We need to look at that. A person should be qualified to do the job. If they are acting on behalf of a council, they are bringing in money and providing value for money. However, it sounds as though councils would be picking up the tab for people to just to sit on some group. We need to look at whether a person is a professional hired by the council to do a job, and whether they may or may not need to sit on such bodies.

1014. Ms Broadway: It is more about someone being a member of a professional body that relates to the job that they do.

1015. The Chairperson: I understand. We will look at the matter again.

1016. Mr Kinahan: I was purely making the point that, if we want to keep people in their jobs in councils, sometimes we have to match what is happening in the outside world. That is why we need to explore that.

1017. The Chairperson: The Committee does not have a problem with training if there is a need for it. If it helps someone to retain their council position to the betterment of the council, that is fine. However, people should not be sitting on bodies for the sake of it.

1018. Mr W Clarke: Following on from what Danny said, could we have a list of the associations that officers currently sit on? For example, are those veterinary associations, waste management associations, tourism associations and so on? That would give us a flavour and a better idea of what is going on. We want to make sure that it is not golf clubs.

1019. The Chairperson: No problem. We can certainly look at that.

1020. Obviously, we will have to revisit this. Julie, we have given you the view of the Committee. We will have to look at that issue again before the formal clause-by-clause scrutiny of the Bill.

1021. We will move on to clause 42, entitled "General interpretation". I remind members that no issues were raised under this clause. Are members content with the general content of clause 42?

Members indicated assent.

1022. The Chairperson: Clause 43 deals with regulations. I advise members that no issues were raised under clause 43. However, any amendment to the level of Assembly scrutiny at clause 24(9), as recommended by the Examiner of Statutory Rules, must be accompanied by an amendment to clause 43. Could we have sight of that amendment prior to the formal clause-by-clause scrutiny?

1023. Ms Broadway: On reflection, we do not need to amend clause 43. The legislation for which the Examiner of Statutory rules suggested a higher level of scrutiny is in an Order, not regulations. Therefore, provision for scrutiny is covered under that being an Order, so we do not need an amendment.

1024. The Chairperson: It is already covered. Are members happy with that response?

Members indicated assent.

1025. The Chairperson: I advise members that no issues were raised around clause 44, entitled "Consultation on regulations, orders and guidance".

1026. Mr Broadway: Clause 44 will ensure that the Department consults on regulations, Orders and guidance before those are made.

1027. The Chairperson: Are members content with the general content of clause 44?

Members indicated assent.

1028. The Chairperson: Clause 45 is entitled "Minor and consequential amendments". No issues were raised about clause 45. Are members content with the general content of clause 45?

Members indicated assent.

1029. The Chairperson: No issues were raised about clause 46, "Repeals". Are members content with clause 46?

Members indicated assent.

1030. The Chairperson: Clause 47 is entitled "Commencement". No issues were raised; are members content with the general content of clause 47?

Members indicated assent.

1031. The Chairperson: Are members content with clause 48, the short title of the Bill?

Members indicated assent.

1032. The Chairperson: There are no issues with schedule 1, "Minor and consequential amendments". Are members content with schedule 1?

Members indicated assent.

1033. The Chairperson: No issues were raised about schedule 2, "Repeals". Are members content with schedule 2?



Members indicated assent.

1034. The Chairperson: Other relevant issues were raised in written and oral evidence received by the Committee that do not sit within specific clauses. Those issues included regulations on constraints and consultation.

1035. Ms Broadway: Copies of the draft regulations and guidance have been supplied to the Committee. I hope that they show that we are not trying to restrain through regulation the relaxation that the Bill provides and that there is a requirement to consult on the regulations. Clause 44 requires the Department to consult on any regulations, Orders or guidance before making them.

1036. The Chairperson: What will happen in respect of public private partnerships and public finance initiatives?

1037. Ms Broadway: That issue is dealt with in the Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010.

1038. The Chairperson: OK. There is the important wee issue of social clauses.

1039. Ms Broadway: Yes. There has been progress on that issue since the Committee received written evidence from people about it.

1040. The Chairperson: OK.

1041. Ms Broadway: To give you some background, the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992 imposes restrictions on councils that prevent them from including social clauses in contracts. Under the Local Government (Best Value) Act (Northern Ireland) 2002, we could bring forward subordinate legislation to lift that restriction.

1042. Over the past nine to twelve months, there has been a number of correspondence cases to the Minister, asking that the Department lifts the restriction on social clauses. The Minister responded by saying that he would ask officials to look at that. However, at that time, given the Department's heavy legislative workload and the resources that that required, he could not give any timescale for such a change. We have since looked at it and drafted the necessary subordinate legislation and guidance. We have sent the guidance to our colleagues in DFP, so that they can make sure that it does not cut across the general procurement legislation or EU procurement legislation.

1043. The Minister was recently asked for an update on the issue, and he replied that we hope to be in a position to consult on the necessary subordinate legislation and guidance in the new year, which would mean that before the end of this year we would be able to give the Committee details of what we propose to bring forward.

1044. The Chairperson: That is new year 2011?

1045. Ms Broadway: Yes.

1046. The Chairperson: OK. So, the Committee will have something in writing by the end of the year.

1047. Ms Broadway: Absolutely, yes. In fact, if you wish, we can send the Committee the SL1 now.

1048. The Chairperson: I would certainly like to see that. We will rubber-stamp that next week. Thank you very much.

1049. The issue of land and property disposals and valuations was also raised.

1050. Ms Broadway: Further policy development is needed on the wider issues of land disposal and vesting. Those issues are quite complex and have not yet been consulted on. Therefore, we need to do further work on that.

1051. The Chairperson: I will read out the other issues: emergency provisions; repeals; benchmarking; transparency; gender-neutral language; and the potential for the misuse of corporate credit cards.

1052. Ms Broadway: It is expected that councils would make allowances for emergency situations when considering the estimates of income and expenditure under clause 3, to determine a prudent level of reserves to deal with such circumstances. However, I am not sure whether the Committee's query was about that or whether it was to do with more general emergency provision around, for example, flooding.

1053. The Chairperson: It was just a general query.

1054. Ms Broadway: We asked the draftsman about the gender-neutral issue. We have no problem changing the language. However, the reason that it was drafted with "chairman" and "vice-chairman" is that the provision links back to the 1972 Act. Therefore, it was done for consistency.

1055. The Chairperson: But we can read it as "chairperson"?

1056. Ms Broadway: Yes.

1057. Mr McGlone: Should you not have said draftsperson? [Laughter.]

1058. The Chairperson: We still have to deal with benchmarking and repeals. Are there any other comments, perhaps on the credit card issue?

1059. Mr Small: The response that we gave in our submission, which you may not have had time to read yet, is comprehensive and explains that that is handled through the existing internal audit and, in this case, the local government audit mechanism. It is true to say that that may be a case of shutting the stable door after the horse has bolted. However, it may, at least, advise other councils of the potential for their horses to bolt and they can, therefore, do something about that. That is part of the reason for the local government auditor's report.

1060. The Chairperson: We still have to deal with benchmarking, transparency and repeals.

1061. Ms Broadway: Regulation 13 of the draft local government payments to councillor regulations 2011 will require councils to publish a scheme of allowances as soon as is practicable after the end of the year and to publish the total sum of allowances that councillors got in that year. The Local Government (Northern Ireland) Order 2005 provides for the inspection of documents at the time of audit.

1062. Could I get some clarification on the benchmarking query? No proposal has been made to change the statutory formula that is currently used.

1063. The Chairperson: It was just a general query, so that is fine.

1064. Thank you very much; that covers everything. Hopefully, the time that we spent today will be saved at the formal clause-by-clause scrutiny stage. However, there are a few things that we need to go back to.

1065. Ms Broadway: Thank you.

1066. The Chairperson: That concludes the informal analysis of the Local Government Finance Bill. Formal clause-by-clause scrutiny will be timetabled pending the receipt of the text of amendments from the Department and the NILGA research on the roles of chief executives and chief financial officers in local councils. A final Committee position on each clause will be sought at the formal clause-by-clause scrutiny stage. I thank members for their patience. I thank Shauna Mageean for her assistance.

25 November 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)  
Mr Patsy McGlone (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Willie Clarke  
Mr John Dallat  
Mr Danny Kinahan  
Mr Peter Weir  
Mr Brian Wilson

Witnesses:

Ms Julie Broadway  
Mr Dickson Holliday  
Ms Lizanne Kennedy  
Mr John Small  
Department of the Environment

1067. The Chairperson (Mr Boylan): I welcome Julie Broadway, John Small, Lizanne Kennedy and Dickson Holliday from the Department. We will now go through clauses 1 to 48 and schedules 1 and 2 and seek the Committee's position on each. A clause-by-clause table with the issues raised and the Department's responses is in members' packs.

1068. This is the last opportunity that members will have to discuss the Bill, and all decisions are final. On the odd occasion, the Committee has got to Consideration Stage and had to make changes; therefore, we will try to iron out all the issues today. Julie and her team are here in case we need to ask questions.

1069. I apologise for being late, as I know that the witnesses were in time. Ignore our earlier conversation in the corridor just in case.

1070. Mr Weir: You are raising suspicions.

1071. The Chairperson: Do not record that. [Laughter.]

Clause 1 (Duty to make arrangements)

1072. The Chairperson: I remind members that they deferred a decision on clause 1 until they saw the research paper by NILGA on the role of the chief financial officer, councils' capacity to appoint an existing officer as the chief financial officer, and the status quo in councils. Of the 17 councils that responded to NILGA, 16 advised that they could re-designate an existing officer as a chief financial officer, two already operate a separate system, three have qualified accountants as chief executives and one indicated that it would need to recruit externally for a chief financial officer.

1073. A letter from the Society of Local Authority Chief Executives (SOLACE) states that although it has no strong opinion on the separation of the chief executive and chief financial roles, it believes that it is important not to undermine the chief executive's role as chief accounting officer.

1074. I remind members that the Department intends to issue a local government circular to councils supporting the Chartered Institute of Public Finance and Accountancy (CIPFA) statement, which includes recommendations that the chief financial officer should hold membership of a recognised professional accountancy organisation and be a key member of the council's leadership team. It also implies there should be a separation of the two roles. The Department plans to include a legislative provision to separate the roles in the proposed local government (reorganisation) Bill.

1075. The clause will allow for a designated officer to be appointed and it will be up to councils to decide whether it will be one or two roles. Julie, do you wish to make any comments?

1076. Ms Julie Broadway (Department of the Environment): What you said is clear, Chairperson. The clause does not deal with a separation of roles; it just ensures that someone is designated as chief financial officer.

1077. The Chairperson: Is the Committee content with the clause?

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

Clause 1 agreed to.

Clause 2 (Accounting practices)

1078. The Chairperson: I remind members that no issues were raised about clause 2 and that members were previously content with it.

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

Clause 2 agreed to.

Clause 3 (Annual budget)

1079. The Chairperson: I remind members that no issues were raised about clause 3 and that members were previously content with it.

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

1080. Clause 3 agreed to.

Clause 3 (Annual budget)

1081. The Chairperson: I remind members that no issues were raised under clause 3 and that members were previously content with it.

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

Clause 3 agreed to

Clause 4 (Report by chief financial officer on estimates)

1082. The Chairperson: Clause 4 is the report by the chief financial officer on estimates. The Department provided clarification that robustness should derive from roles' separation, which ensures that there is a chief financial officer dedicated to, and responsible for, the preparation of the estimates and who can follow through on guidance issued by the Department, accounting standards and the CIPFA Prudential Code.

1083. Members previously indicated that they were content with the Department's response on the matter.

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

Clause 4 agreed to.

Clause 5 (In-year review)

1084. The Chairperson: I remind members that the Committee had no issues with clause 5 and that members were previously content with the clause.

1085. Mr Dallat: Are we happy that the clause is sufficient to compel councils to keep their financial positions under review? I ask that because you could either look at the file every morning or have a mechanism to do it.

1086. Mr John Small (Department of the Environment): The local government audit mechanism is our key method of control.

1087. Mr Dallat: I do not know; I am just asking the question.

1088. The Chairperson: Therefore there is already a mechanism.

1089. Mr Small: Yes.

1090. Mr Buchanan: Is the role of the local government auditor robust enough? Does the way that the auditor keep an eye on council finances, how those finances are spent and how councils are run need to be tightened? Is the provision robust enough to ensure that nothing goes awry in councils' finances?

1091. Mr Small: That is a subjective question, because it is very difficult to measure whether the role is robust enough; it would be very difficult to decide who would make that decision.

1092. When the local government auditor was here, he said that he had enough powers. Moreover, we are bringing in additional powers in the Bill to assist him, which he did not mention because they were not relevant to him. If things went wrong, those powers would enable us to reduce the borrowing limit of a council and to hold reserves. That would be quite an admission of power, which would arise in the course of the auditor's investigations. After the auditor had

consulted with and advised the Department, we would take a decision on whether to use those powers. That would be unusual; nonetheless, we would have the powers at our disposal.

1093. Mr Buchanan: Sometimes the audit commission only steps in when something has happened that has caused alarm and when money has been spent in a way that it should not have been. The issue is earlier intervention to ensure that finances are protected and not spent in the wrong way.

1094. Mr Small: That is our stable-door discussion. We talked about that issue, and there is no way of preventing something before you know that it will happen. That will always be the position. If there is an alert, the best that we can do is have a system that allows the local government auditor to go in at very short notice to see what is happening and provide the Department with a report. After that, any action will be subsequent to the event.

1095. Mr McGlone: You are quite right about the stable-door discussion. Thank you for raising that point. However, I do not accept your view that there is no way to prevent something happening; of course there is.

1096. Mr Small: I meant that it is difficult to act before you know that something will happen.

1097. Mr McGlone: If the local government auditor or the Department are alerted to a problem, there is a mechanism for dealing with it. Mr Buchanan's point is the same as mine: intervention needs to happen much earlier. We cannot wait until the local government auditor comes down, possibly 11 months later, to review the books, because if he highlights a problem it will take another six or eight months before any action is concluded by which time the issue is out the door. The big question is how to get earlier intervention to prevent something like that happening.

1098. Mr Small: We have that power.

1099. Mr McGlone: You may have it; the issue is whether it is used. Anecdotal and evidential information has been drawn to my attention that that power is rarely, if ever, used. There are some issues with individual councils, which I do not want to get into at the moment, but it is clear that any mechanism that could be introduced would provide much earlier intervention. It is not good enough to say that the power is there to do it; there must be the will to do it and more of a get-up-and-go attitude when attention is drawn to problems.

1100. The Chairperson: I remind members that the Committee was generally content with the previous response.

1101. Mr W Clarke: I declare an interest as a local councillor.

1102. Mr Dallat: I no longer need to declare an interest; I stopped double-jobbing. [Laughter.] The contributions by Tom and Patsy are very valid. There is no system in place to stop things going wrong, and local councils do not have internal committees like the Assembly's Public Accounts Committee. Some have, but, to be honest, they are scratching around to find out what they should do. Is there something in legislation that will compel councils to have audit committees and mechanisms so that they do not spend all the money and that problems are only discovered by the local government auditor during his annual visit? There have been some outrageous scandals involving ratepayers' money being spent wrongly.

1103. Ms Broadway: As part of the policy proposals for the reorganisation of local government it was considered whether the larger councils should have audit committees.

1104. Mr Dallat: That is a good point. I wonder why on earth we are considering a Bill that will probably not apply until the review of public administration (RPA) comes round again — if it does; it may not. Should we have a laissez-faire system, or no system at all, while someone decides whether we should have RPA? There is no point in wasting our time if we do not get the legislation right. There is a big gap here, Chairman, and you know it. There are still cheque-book payments from councils shifting out of hip pockets, and it must stop.

1105. The Chairperson: I totally agree in part with some of those comments. However, councillors have a role to challenge. I sat on a council —

1106. Mr Dallat: I sat on a council for 33 years.

1107. The Chairperson: There are executive committees in some councils. There needs to be a mechanism to check for problems, and bad practices in some councils have been highlighted.

1108. Mr Dallat: Councillors will be the last to hear about —

1109. The Chairperson: In some cases that is true. However, in corporate councils the challenge function is in the council chamber, and it is up to councillors to ask questions. Clause 6(2) states that:

"The chief financial officer of a council shall submit to the council a report on the adequacy of any proposed financial reserves"

That provision may help in the process.

1110. Mr Dallat: Barings Bank.

1111. Ms Broadway: Would you like us to take the issues of the audit powers back to the Minister and look again at the powers of the local government auditor?

1112. Mr Dallat: No; we are discussing the Bill.

1113. Mr Weir: No one has raised any issue about this in the Bill, and I am mindful of that when we are talking about making changes. Some things have been done better in some councils than in others, and, when it has not been done well, the failing is not through any lack of power. Ultimately, it is councillors who should run a council by setting its policies and ensuring that things happen. The buck stops with them. Sometimes officers overstep the mark, but only because councillors allow them to do so. Councillors must take ultimate responsibility. We may not be perfect in North Down Borough Council, but the way that we conduct our business there is pretty thorough.

1114. There are statements of accounts, which an audit committee deals with. However, I have seen other councils where I think that that process is not done as well. The buck stops with councillors, who have allowed others to get away with it. I do not think that the situation has been caused by any lack of formal regulation, because, to be perfectly honest, it has been caused by lack of action on the part of councillors. That is difficult to legislate for.

1115. Mr W Clarke: Following on from what the Chairperson and Mr Weir said, there is an onus on councillors to act. They are elected, and they sit on committees to look at budgets and financial statements. I declared an interest as a councillor, and, from my own experience, I know that if I see any wrongdoing or money going into an area that it should not, I make sure that that issue is raised with the local government auditor for it to investigate. I think that there is an

onus on every councillor from every party to ensure that there are audit committees in every council. That is up to elected members. Therefore, I agree with the two members who spoke previously.

1116. Mr Buchanan: I should have declared an interest.

1117. Mr McGlone: As an auditor?

1118. Mr Buchanan: No, as a councillor.

1119. The Chairperson: Given your previous comment, I will allow you to declare that interest, Mr Buchanan.

1120. Mr McGlone: There is a need for a further point of clarity. I listened carefully to Peter's points. We all know that councillors have a responsibility and a role to play. However, we also know that, on some occasions, when the chips were down at councils, block votes were used to decide whether something should or should not be an issue. We do not need to go into which councils did that.

1121. Mr W Clarke: Those councils could be brought to the auditor.

1122. Mr McGlone: That brings me to the very point that I was making, Willie. The effectiveness of the audit process and the kick-in should be almost instantaneous where there is power. That seems to be missing, and there is a weakness in the system that is not allowing for that type of process to kick in.

1123. The Chairperson: We are going through the Bill, and this discussion is outside its remit. The Committee has discussed these provisions already and is content with them. Some very valid points have been raised, but clause 3(2) states:

"A council, before the prescribed date in each year –

(a) shall consider the estimates for the next financial year;

(b) may revise the estimates in such manner as the council thinks fit;"

Enough mechanisms are in that subsection, and the reports should be made to local councils.

1124. I know that there have been bad practices in the past, but, as a result of the Bill, councillors and financial officers will need to hold people to account and bring proper budgets and budget statements to councils. That is what is behind the idea of someone's being a financial officer. We have all sat on councils and know how the processes work. Mr Clarke made a valid point; although councils do not have accounts committees, they have scrutiny committees. Questions need to be asked.

1125. The Committee was content with this clause a couple of weeks ago. I am going to put the Question, and members can decide whether they want to make a decision, come back to the clause or ask Julie and her team for more detail. Perhaps we could ask the Department to find out whether there is any way in which the audit process could be strengthened.

1126. Ms Broadway: We can take that point to the Minister and tell him that the Committee has recommended that a review of the audit process be carried out to see whether we need to make changes to the audit provisions.



1127. The Chairperson: Are members happy enough to go down that route?

Members indicated assent.

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

Clause 5 agreed to.

Clause 6 (Reserves – general)

1128. The Chairperson: I remind members that the Department was asked to clarify whether regulations would provide sufficient flexibility for councils to accumulate reserves for medium and long-term objectives. The Department advised that it does not plan to impose any control on reserves and that it will be for each council to decide its level of reserves. Members indicated previously that they were content with the Department's response to that matter.

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

Clause 6 agreed to.

Clause 7 (Controlled reserves)

1129. The Chairperson: I remind members that several respondents were not in favour of designation of any reserves as controlled reserves. They considered that the departmental guidance of maintaining a minimum district fund balance equating to between 5% and 7.5% of the net operating expenditure to be a sufficient control.

1130. The Department advised that it does not plan to impose any control on reserves. That power would be used only if the Department became aware that a council was deemed to be acting improperly, and the creation of regulations under the clause would be subject to negative resolution.

1131. I remind members that concerns were expressed that the Department would be able to act only retrospectively should irregular and improper expenditure be undertaken by a council and that the legislation would not prevent irregular actions occurring but would deal only with the consequences after such actions. The Department advised that it regards the current system of governance, along with the new controls proposed in the Bill, as sufficient.

1132. Basically, councils have that 5% to 7.5% reserve at present, and the proposal is that that should be retained. Is that correct?

1133. Mr Small: We are not changing that position, and it was purely voluntary anyway. It would be contrary to the whole concept of the Bill if we were to impose things. It is purely guidance.

1134. The Chairperson: Thank you. Is the Committee therefore content?

1135. Mr Weir: If the indication is that, if a voluntary scheme were being followed and advice could be given on that, is the issue not about whether clause 7 is actually unnecessary?

1136. Mr Small: For information, the provisions would apply in a serious situation where problems arise. They would be used only in an extreme situation.

1137. The Chairperson: Peter, did you want to come back on that?

1138. Mr Weir: No.

1139. The Chairperson: The question is whether the Committee feels that the clause is needed. After hearing that clarification, do you feel that it is needed?

1140. Mr Weir: Yes, I can live with it. I am just saying that I know that concerns were raised.

1141. The Committee Clerk: We looked into this further, and we asked about what happens in England where a similar provision is in place. That has never been enacted, but it is there in case of an emergency.

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

Clause 7 agreed to.

Clause 8 (The general fund)

1142. The Chairperson: No issues were raised on this clause.

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

Clause 8 agreed to.

Clause 9 (Power to establish other funds)

1143. The Chairperson: I remind members that clarification was sought from the Department that funds established under this clause would not be treated as controlled reserves. The Department has confirmed that it does not plan to impose any control on the reserves. Members were previously content with the Department's response on the matter.

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

Clause 9 agreed to.

1144. Clause 10 (Limitation on application of funds)

1145. The Chairperson: I remind members that no issues were raised about clause 10.

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

Clause 10 agreed to.

Clause 11 (Power to borrow)

1146. The Chairperson: I remind members that guidance was sought from the Department on borrowing. The Department advised that subordinate legislation under this Bill, that is, the proposed capital finance and accounting regulations, would impose a duty on councils to have regard to the CIPFA prudential code for capital finance in local authorities. That code sets out clear governance procedures for the production of capital investment plans that are affordable, prudent and sustainable. A copy of these draft regulations has been provided to members. I remind members that they previously indicated that they were content with the Department's response.

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

Clause 11 agreed to.

Clause 12 (Control of borrowing)

1147. The Chairperson: I remind members that clarification was sought from the Department as to whether there would be a stated requirement for the chief financial officer to report to the council on the review of the borrowing limit. The Department confirmed that adherence to the prudential code requires a chief financial officer to review the council's borrowing limit and to report to the council. Clause 13 also addresses that concern. I remind members that they previously indicated that they were content with the Department's response on the matter.

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

Clause 12 agreed to.

Clause 13 (Duty to determine affordable borrowing limit)

1148. The Chairperson: I remind members that no issues were raised on the clause and that members were previously content with it.

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

Clause 13 agreed to.

Clause 14 (Imposition of borrowing limits)

1149. The Chairperson: I remind members that there were two issues with this clause. First, clarification was sought from the Department that borrowing limits would be imposed only if a council had disregarded its duty under clause 13. The Department confirmed that that power would be used only if it became aware that a council had been deemed to be acting imprudently.

1150. Secondly, some respondents sought a definition of the term "national economic reasons". The Department contended that providing such a fixed definition would be impracticable and that such a power was intended to be used as a last resort and would require the consent of the Department of Finance and Personnel (DFP). The Department advised that there would be no requirement for regulations under that power to be consulted on. A copy of the Department's response has been provided for members in a letter dated 8 November 2010.

1151. I remind members that they previously indicated that they were content with the Department's response to both those issues.

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

Clause 14 agreed to.

Clause 15 (Temporary borrowing)

1152. The Chairperson: No issues were raised about the clause.

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

Clause 15 agreed to.

Clause 16 (Protection of lenders)

1153. The Chairperson: I remind members that no issues were raised about the clause and that members were previously content with it.

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

Clause 16 agreed to.

Clause 17 ("Credit arrangements")

1154. The Chairperson: I remind members that two issues were raised about this clause. First, clarification was sought from the Department that trade creditors would be excluded from the definition of a credit arrangement. The Department confirmed that trade creditors would be excluded in relation to long-term finance, presuming that they are paid within a 12-month calendar period.

1155. Secondly, clarification was sought from the Department on whether the long-term liabilities connected to the closure and aftercare costs associated with landfill sites would be treated as credit arrangements. The Department advised that those costs would need to be provided for within the annual budget. The costs would be divided between capital costs, which are for putting in the infrastructure that is needed to treat the products of a landfill site after it has been closed, as well as the revenue costs for operating and maintaining that.

1156. A credit arrangement could be entered into for capital costs. That would be for installing the equipment that is required, and the council would need to take that into account as part of its overall implementation expenditure.

1157. I remind members that that they were content with the departmental response to both those issues.

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

Clause 17 agreed to.

Clause 18 (Control of credit arrangements)

1158. The Chairperson: I remind members that there were no issues with clause 18.

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

Clause 18 agreed to.

Clause 19 ("Capital expenditure")

1159. The Chairperson: No issues were raised with clause 19.

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

Clause 19 agreed to.

Clause 20 ("Capital receipt")

1160. The Chairperson: No issues were raised about the clause.

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

Clause 20 agreed to.

Clause 21 (Non-money receipts)

1161. The Chairperson: No issues were raised about the clause.

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

Clause 21 agreed to.

Clause 22 (Use of capital receipts)

1162. The Chairperson: I remind members that clarification was sought from the Department that there should not be a requirement for capital receipts to be applied in the first instance against any money borrowed by the council for the purposes of acquiring the asset in question. The Department confirmed that there will be no such requirement and advised that subordinate legislation that will be made under the Bill, that is, the capital financing and accounting regulations, will provide detail on the use of capital receipts.

1163. A copy of the draft regulations has been provided. However, I remind members that they previously indicated that they were content with the Department's response to this matter. Is the Committee content with clause 22?

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

Clause 22 agreed to.

Clause 23 (Power to invest)

1164. The Chairperson: I remind members that guidance was sought from the Department about investments. In response, the Department compiled draft guidance on investments for the councils, which will be issued under this Bill.

1165. The Department also referred to the investment guidance in the CIPFA prudential code, which will apply to all local councils once the Bill is enacted. Members have been provided with a copy of the draft guidance. I remind members that they previously indicated that they were content with the Department's response.

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

Clause 23 agreed to.

Clause 24 (Security for money borrowed, etc.)

1166. The Chairperson: I remind members that the Committee, on the advice of the Assembly's Examiner of Statutory Rules, sought an amendment to clause 24 about the appointment of a receiver where unpaid council borrowings are concerned. The clause states that a receiver can

be appointed if the borrowings are not less than £10,000. It also states that the Department can amend that amount. The Committee sought that any amendment to this amount should be subject to draft affirmative procedure so that this Committee can subject it to a higher degree of Assembly scrutiny. The Department's draft amendment has been provided in a letter dated 8 November 2010. I refer that to members before I put the Question.

1167. Is the Committee content with clause 24, subject to the amendment proposed by the Department to make orders under subsection 9 subject to draft affirmative procedure, which gives the Committee a higher level of scrutiny?

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

Clause 24, subject to the Department's proposed amendment, agreed to.

Clause 25 (Guidance)

1168. The Chairperson: I remind members that there are no issues with clause 25.

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

Clause 25 agreed to.

Clause 26 (De-rating grant)

1169. The Chairperson: I remind members that there are no issues with clause 26.

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

Clause 26 agreed to.

Clause 27 (Rates support grant)

1170. The Chairperson: There are some issues with this clause. I advise members that the Department intends to table two amendments to clause 27 at Consideration Stage. The first amendment will give the Department power to request the necessary information by determination, rather than by statutory pro forma. The other amendment is consequential to a proposed amendment to clause 43, which relates to incidental, supplementary, consequential, transitory or saving provisions. However, we will deal with that later.

1171. I inform members that a copy of the Department's first proposed amendment has been provided in a letter dated 22 November 2010. The second of the Department's proposed amendments has also been provided in a letter dated 8 November.

1172. I remind members that stakeholders raised two issues under this clause. First, clarification is sought from the Department that the formula for the allocation of the rates support grant, formerly the resources grant, would be reviewed after the review of public administration. The Department confirmed that the central statistics and research branch carries out an equality monitoring exercise every year. Secondly, it was considered that the rates support grant should be ring-fenced to prevent in-year cuts. The Department advises that such cuts, as occurred previously, were unique and exceptional and that future similar in-year cuts could not be ruled out due to greater budgetary pressures.

1173. I inform members that correspondence from the Association of Local Government Finance Officers regarding the need to ring-fence the rates support grant is provided. A draft Committee amendment to the clause is also provided. That amendment will ensure that rates support grants, once set, will not be cut within a financial year.

1174. I advise members that I will put the Question on the clause. There will be an opportunity to discuss clause 43, which requires a consequential amendment. One of the two amendments is a request to ring-fence money, which the Committee agreed, and the other is a departmental amendment.

1175. Ms Broadway: There are two departmental amendments. One amendment will omit clause 27(5)(c) and add in a subsection (a) after clause 27(9). That is being done for administrative reasons. The current regulations on rates support grant require councils to provide information to allow for the calculation of the grant to be provided by a pro forma. However, at times, the pro forma can change as a result of purely technical accounting issues. Those issues do not affect the calculation of the formula, but they may relate to categories of depreciation, for example. A table of information on that has been provided.

1176. It would mean that, if we wanted to make those technical amendments, we would have to bring draft affirmative legislation to the Assembly to get it to debate issues that are basically administrative. Therefore, the second proposed amendment would allow us to seek that information by departmental determination whereby we would write to councils to tell them the information that we need to allow us to make the calculation. That would be done rather than their having to fill in a pro forma.

1177. Mr Small: Those matters are largely outwith our control. We would have to make CIPFA-type accounting practice changes to make the whole process fit in with the latest accounting procedures. It is not something that we would wish to do; it is something that would be forced upon us.

1178. Ms Broadway: I reiterate that it does not change the elements or the calculation of the formula. If any amendments were needed, a draft affirmative legislation would be required to be brought before the Committee and the Assembly.

1179. The Chairperson: If members are happy with that explanation, I will ask whether you agree with the departmental amendments to give the Department powers to request the necessary information for calculating the rates support grant from councils by determination rather than by pro forma.

Members indicated assent.

1180. The Chairperson: I beg to move

1181. That the Committee recommend to the Assembly that the clause be amended as follows:  
In page 9, line 26, at end insert

"and shall not be reduced during the financial year in question"

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

1182. Mr Weir: I thought that the departmental officials would want to say something at this stage.

1183. Mr Small: I appreciate that, Mr Weir. We had a discussion about the matter, and we were uncomfortable with it. The Committee will be aware of the Department's lack of flexibility, despite the fact that the budget is reasonable. Eighteen million pounds is a big element of that. That amendment would restrict the Department's position for this year and next year. That is not something that will be taken lightly, and the Minister was very reluctant to make such a cut. He understands the difficulties that a negative adjustment or, as you might say, a reduction, during the year, will mean to councils. We are uncomfortable with that amendment, but the Committee has a decision to make.

1184. The Chairperson: I think that the Committee has made its decision. However, we have not agreed the consequential amendment, because, before we do, we have to go to clause 43. In principle, members are saying yes. Are you happy with that, Mr Weir?

1185. Mr Weir: I understand the logic of the amendment, but I also understand the Department's position.

1186. The Chairperson: I will come back to that clause.

Clause 28 (Reductions in grants under section 26 or 27)

1187. The Chairperson: I remind members that there are no issues with clause 28.

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

Clause 28 agreed to.

Clause 29 (Other grants to councils)

1188. The Chairperson: I remind members that there are no issues with clause 29.

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

Clause 29 agreed to.

Clause 30 (Payments due by councils to departments, etc.)

1189. The Chairperson: I remind members that it was suggested that an early warning system for payments due by councils to Departments be introduced. The Department advised that it will undertake to provide notification as early as possible to any council affected by the invoking of clause 30. Members have a copy of the Department's response in a letter dated 8 November.

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

Clause 30 agreed to.

Clause 31 (Allowances, etc. for councillors)

1190. The Chairperson: I remind members that clarification was sought from the Department that payments must be flexible to accommodate those who wish to make a career from local government and for those who wish to take a position on a part-time basis. The Department confirmed that the basic allowance will be the same for all councils, but councils will have flexibility on payments of special responsibility allowances. I remind members that they previously indicated that they were content with the Department's response.



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

Clause 31 agreed to.

Clause 32 (Allowances for chairman and vice-chairman)

1191. The Chairperson: I remind members that clarification was sought from the Department on the financial transparency of officers in councils. The Department confirmed that the remuneration of senior officers of council should be reported in a council's annual statement of accounts. Members previously indicated that they were content with the Department's response, and I remind them that they raised the issue of the gender of the terms that are used in this clause. The Department indicated that such terms are used in clauses 32 and 39 because they refer to the offices of chairman and vice-chairman, established under section 11 and 13 of the Local Government Act (NI) 1972. The Department has provided a letter dated 22 November. The letter contains draft amendments to make clause 32 gender neutral.

1192. Should the clause be amended with the general neutral terms "chairperson" and "vice-chairperson"?

Members indicated assent.

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

Clause 32, subject to the Department's proposed amendment, agreed to.

Clause 33 (Expenses of official and courtesy visits, etc.)

1193. The Chairperson: I remind members that no issues were raised under clause 33.

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

Clause 33 agreed to.

Clause 34 (Expenses incurred in attending conferences and meetings)

1194. The Chairperson: I remind members that the Department has removed some of the restrictions on the payment of expenses to councils under this clause in response to the concerns of the National Association of Councillors (NAC) that attendance at meetings of its organisation would not be covered. It will now largely be a matter for each council to decide whether attendance at a conference relates to the interests of the district. Members have been provided with copies of the comments from the NAC.

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

Clause 34 agreed to.

Clause 35 (Panel to advise on payments to councillors)

1195. The Chairperson: I remind members that concerns were expressed regarding the cost associated with the establishment and running of the independent panel to establish councillor payments. The Department advised that those costs will be met by the Department and will not necessarily be incurred every year. Department has provided further detail on the estimated

costs of the remuneration panel, which has been provided for members in a letter dated 8 November. The Committee had issue with the costs and, therefore, we need to be very careful. We understand the reason for the panel; however, there are concerns about the cost.

1196. Ms Broadway: The Minister will set up the panel only when he requires a review to be carried out. It is not the case that as soon as the Bill becomes an Act we will be setting up the panel. It will be set up only when the Minister decides that he wishes a review to be carried out. Furthermore, the panel will do only that which the Minister asks it to do. For instance, if the Minister wanted a full review of councillors' remuneration, the panel would be set up to do that. However, the Minister may choose to carry out a targeted view on certain aspects of remuneration. The panel would be paid only for the days on which it sat. A panel set up for 12 months would not be paid for the whole 12 months; it would be paid only for the days on which it sat.

1197. The Chairperson: Therefore discussions are not likely to take place in the south of France. [Laughter.]

1198. Mr Weir: If they did, we would have to go there to give evidence. [Laughter.]

1199. The Chairperson: Is the Committee content with the clause?

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

Clause 35 agreed to.

Clause 36 (Interpretation)

1200. The Chairperson: Further detail was sought from the Department on a non-councillor receiving expenses. The Department advised that such expenses may be authorised by the council to cover attendance by non-councillors at conferences or meetings that relate to the interests of the district, where such non-councillors would attend on account of their professional expertise or as representatives of external stakeholders.

1201. Ms Broadway: That will mostly be used in town-twinning cases.

1202. The Chairperson: Is the Committee content with the clause?

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

Clause 36 agreed to.

Clause 37 (Payments for special purposes)

1203. The Chairperson: Clarification was sought from the Department on the review of the current limits of expenditure for special purposes. The Department advised that, if necessary, it can increase those limits under subordinate legislation. The Committee sought research on existing limits in councils and examples of expenditure made for special purposes. A copy of that research has been provided for members. I remind members that they previously indicated that they were content with the Department's response on the matter.

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

Clause 37 agreed to.

Clause 38 (Restrictions on power to make payments under section 37)

1204. The Chairperson: I remind members that some respondents to the Committee sought an amendment to the clause so that it would read:

"a council shall not make payments under section 37 unless, in its opinion, the direct benefit accruing".

The Department advised that that amendment is unnecessary, as clause 38 is subject to clause 37, which already gives councils discretion as to whether a payment is for a purpose that would bring direct benefit to the council. Are we happy with that clarification? Members previously indicated that they were content with the Department's response.

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

Clause 38 agreed to.

Clause 39 (public appeals)

1205. The Chairperson: I remind members that some respondents to the Committee sought an amendment to the clause to replace the words "particular event" with the word "circumstances". The Department is not minded to amend the clause, as the provision is to allow councils to make one-off payments associated with particular events rather than regular payment to causes in general. Members previously indicated that they were content with the Department's response. I also remind members that, as in clause 32, gender-specific language has been used. Members have been provided with a draft departmental amendment in a letter dated 22 November, which introduces gender-neutral language to the clause. Do members feel that the clause should be amended with the gender-neutral terms "chairperson" and "vice-chairperson"?

Members indicated assent.

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

Clause 39, subject to the Department's proposed amendment, agreed to.

Clause 40 (Limit on expenditure under sections 37 and 39)

1206. The Chairperson: No issues were raised with clause 40.

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

Clause 40 agreed to.

Clause 41 (Subscriptions to certain local government associations and other bodies)

1207. The Chairperson: I remind members that concerns were expressed that public funds would be used to pay for an officer of a council to be a member of a professional body associated with their job, where membership of that body was a requirement to attain the post at the outset. The Committee sought research on existing practices in councils. That research has been provided. The Department also contacted councils, 10 of which responded with a composite list of 91 bodies of which council officials are members. A copy of that information is

provided in a letter dated 8 November. We did not see that information until today. Are members content with the departmental response?

1208. Mr McGlone: What information has only been seen today?

1209. The Committee Clerk: The research indicating the bodies that councils pay for their staff to be members of, and the letter from the Department dated 8 November.

1210. The Chairperson: Members have that information in tabs 4.9 and 4.4 of their packs?

1211. Mr McGlone: Which — 4.9 or 4.4?

1212. The Committee Clerk: Both. The research is at tab 4.9; the letter from the Department is at tab 4.4. It is the first of two letters in that tab.

1213. The Chairperson: Is the Committee content with the clause?

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

Clause 41 agreed to.

Clause 42 (General interpretation)

1214. The Chairperson: No issues were raised with the clause.

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

Clause 42 agreed to.

Clause 43 (Regulations)

1215. The Chairperson: I advise members that the Department intends to table an amendment to clause 43 to allow any regulations to be made under the Bill to include such incidental, supplementary, consequential, transitory or saving provisions as may be considered necessary. Such a power is usual in any Bill. A copy of the Department's draft amendment is in members' information packs. The Examiner of Statutory Rules is content with the amendment.

1216. Is the Committee content with clause 43, subject to the amendment proposed by the Department to allow any regulations to be made under the Bill to include such incidental, supplementary, consequential, transitory or saving provisions as may be considered necessary?

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

Clause 43, subject to the Department's proposed amendment, agreed to.

1217. The Chairperson: Having considered clause 43, I ask members to reconsider formally clause 27, which the Department proposes to amend as a consequence of the amendment to clause 43. The proposed departmental amendment would remove lines 40 and 41 from subsection 8, as they are no longer needed if the Department's amendment allows general provisions to apply to all regulations under the Bill.

1218. Members agreed to a departmental amendment to give the Department powers to request the necessary information for determining the rates support grant by determination rather than by pro forma, and a Committee amendment to prevent the Department from making in-year cuts to the rates support grant.

1219. Is the Committee content to accept the proposed departmental consequential amendment to clause 27 as a consequence of its amendment to clause 43?

Members indicated assent.

1220. Is the Committee content with clause 27, subject to the amendment proposed by the Department as a consequence of its amendment to clause 43 to request information by determination and by the Committee to prevent in-year cuts to the rates support grant?

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

Clause 27, subject to the Department's proposed amendments and the Committee's proposed amendment, agreed to.

Clause 44 (Consultation on regulations, orders and guidance)

1221. The Chairperson: No issues were raised under clause 44.

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

Clause 44 agreed to.

Clause 45 (Minor and consequential amendments)

1222. The Chairperson: No issues were raised under clause 45.

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

Clause 45 agreed to.

Clause 46 (Repeals)

1223. The Chairperson: No issues were raised under clause 46, and members were previously content with the clause.

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

Clause 46 agreed to.

Clause 47 (Commencement)

1224. The Chairperson: No issues were raised under clause 47.

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

Clause 47 agreed to.

Clause 48 (Short title)

1225. The Chairperson: No issues were raised under clause 48.

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

Clause 48 agreed to.

Schedule 1 (Minor and consequential amendments)

1226. The Chairperson: No issues were raised under schedule 1, and members were previously content with the schedule. However, the Committee has been provided with a proposed departmental amendment to add an additional statutory instrument to the schedule of minor and consequential amendments.

Question, That the Committee is content with schedule 1, subject to the Department's proposed amendment, put and agreed to.

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

Schedule 2 (Repeals)

1227. The Chairperson: No issues were raised under schedule 2.

Question, That the Committee is content with schedule 2, put and agreed to.

Schedule 2 agreed to.

Question, That the Committee is content with the long title of the Bill, put and agreed to.

Long title agreed to.

1228. The Chairperson: That concludes the formal clause-by-clause Consideration Stage of the Local Government (Finance) Bill. A Committee report will be brought to the Committee in the next couple of weeks.

1229. Mr B Wilson: I apologise for my lateness and declare an interest as a member of North Down Borough Council.

1230. The Chairperson: Accepted.

## **Appendix 3**

# **Written Submissions Relating to the Report**

# **Association of Local Government Finance Officers (ALGFO) - Written Submission to the Local Government (Finance) Bill**

Our Ref. JC/GOK  
Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Dear Mr McCann

## **Local Government Finance Bill**

I refer to your letter dated 30 April 2010, inviting views on the above proposed bill for consideration by the Committee for the Environment at Committee Stage. ALGFO is pleased to be given the opportunity to comment on the proposals in the Finance Bill and we trust that our comments will be taken into account when developing the final legislation.

I wish at the outset to reiterate that ALGFO welcomes the proposal to introduce a New Local Government (Finance) Bill and the opportunity to modernise the current legislative framework relating to local government finance and Councillors' remuneration in Northern Ireland.

The proposed legislation, especially in relation to the capital finance system, aims to give greater freedom to Northern Ireland Local Authorities and ALGFO would urge that this greater freedom is not constrained through the use of regulations. ALGFO would also trust that there will be adequate consultation with Local Government when the regulations are drafted.

ALGFO would also make the case that there should be adequate legislative provision to support important new initiatives and models for service delivery in the future. This includes powers to participate in Public Private Partnerships (PPP), Public Finance Initiatives (PFI) or Local Asset Backed Vehicles (LABV). It is envisaged that these types of initiatives may be required in order for Councils to put in place arrangements for service delivery models, for example Waste Management, and to effectively manage their assets.

ALGFO would wish to make the following comments on the specific clauses of the Bill.

Clause 1(2) requires a Council to designate an officer of the Council as its Chief Financial Officer.

ALGFO welcomes the intention to separate the roles of Chief Executive and Chief Financial Officer, particularly in light of the responsibilities placed on the Chief Financial Officer in submitting a report on the robustness of the estimates of the Council (clause 4); reporting to the Council the adequacy of financial reserves (Clause 6); and reviewing the Council's affordable borrowing limit (Clause 13).

It is noted that the Department proposes to take this forward in the forthcoming Local Government (Re-Organization) Bill. In the event that RPA is postponed, ALGFO understands that

the Local Government (Finance) Bill would still proceed and strongly proposes that it does. In this eventuality, ALGFO would strongly advocate that due to the important role of the Chief Financial Officer, provision should then be made in the Local Government (Finance) Bill to separate the role of Chief Executive and Chief Financial Officer.

Clause 7 makes provision for reserves specified in regulations under clause 6(1) to be designated controlled reserves, with a required minimum balance at the end of the financial year. The chief financial officer must report to the council on the reasons for a controlled reserve not achieving the minimum level, and any action considered necessary to prevent a recurrence in the following year.

ALGFO would advocate that in the spirit of financial freedom no reserves should be designated controlled reserves, as is the case in the GB regulations that derived from the Local Government Act 2003.

It should be noted that Clause 7 if exercised would also be divergent from the view of CIPFA.....

"CIPFA and the Local Authority Accounting Panel do not accept that a case for introducing a generally applicable minimum level of reserves has been made. Local authorities, on the advice of their chief finance officers, should make their own judgements on such matters taking into account all the relevant local circumstances. Such circumstances vary. A well-managed authority, for example, with a prudent approach to budgeting should be able to operate with a level of general reserves appropriate for the risks (both internal and external) to which it is exposed"

[ref: LAAP Bulletin 77, Local Authority Reserves and Balances]

ALGFO would therefore contend that the recent guidance from DOE issued in December 2009 with regard to minimum balances for the District Fund, which advised that Councils should plan for a District Fund balance above 5% as part of their Rates Estimates should be sufficient. This would fulfill the objective of clause 6(1) of the draft Finance Bill without designating it as a controlled reserve. Councils would also be expected to follow guidance given in the Prudential Code for capital finance.

Clause 22 enables the Department to make regulations about the use of capital receipts.

ALGFO would acknowledge the greater flexibility in the bill for the use of capital receipts and would welcome the removal of the requirement for capital receipts to be applied in the first instance against any money borrowed by the Council for the purposes of acquiring that asset, as sometimes this could result in significant financial penalties for early redemption.

Clause 27 makes provision for the Department to make a rates support grant to district councils for each financial year.

ALGFO would advocate that the statutory formula for the rates support grant needs to be reviewed post RPA to confirm that it continues to meet its objectives, especially in light of the establishment of new local authorities with new functions and functions that will transfer from central to local government.

Furthermore, it is important that the rates support grant be adequately resourced and ring fenced to prevent cuts such as occurred this year when the General Grant (Resources) budget was cut by 5% impacting on the poorest Councils only.



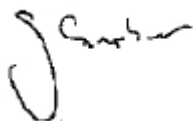
Clause 35 gives the Department power to make regulations for the establishment of an independent panel to advise the Department on payments to Councilors.

ALGFO welcomes the establishment of an independent panel to advise the Department on payments to Councilors to bring Northern Ireland into line with the rest of the United Kingdom, where independent panels already exist to consider the level and system of Councilors' allowances.

Clause 37 allows a district council to make payments for any purpose which in its opinion are in the interests of, and will bring direct benefit to, the council, its district or any part of its district, or the inhabitants of the district or any part of its district.

ALGFO notes that it is proposed to include the general power of well-being in the forthcoming Local Government (Reorganization) Bill and that it is considered necessary to retain this provision until such time as that Bill comes into operation. ALGFO would accept this but request in the meantime that the current limits on expenditure for special purposes be reviewed as they are too low.

Yours sincerely



Chairperson

## **Antrim Borough Council - Written Submission to the Local Government (Finance) Bill**



Our Ref: DMcC/MA

18 June 2010

By email: [sean.mccann@niassembly.gov.uk](mailto:sean.mccann@niassembly.gov.uk)

Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247 Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Dear Sir

**Local Government (Finance) Bill**

In response to your letter dated 30 April 2010 I write to advise that Council is supportive of the general substance of the submission by the Chief Finance Officers. There is one exception however in respect of the role of the Chief Financial Officer which should not, in our opinion, be at odds with the Chief Executive's responsibilities as Accounting Officer for the organisation.

I trust this point may be given due consideration.

Yours faithfully



David McCammick  
Chief Executive

## **Ards Borough Council - Written Submission to the Local Government (Finance) Bill**

From: Amanda.Martin@ards-council.gov.uk

Sent: 15 June 2010 10:37

To: +Comm. Environment Public Email

Subject: Consultation on Local Government (Finance) Bill - Committee Stage

Dear Sir/Madam,

Thank you for consulting with Ards Borough Council on the Local Government (Finance) Bill now that the Committee Stage has commenced.

The Bill was considered by members at a recent meeting of the Council's Policy & Resources Committee and it was resolved to respond as follows:-

\* The Council again welcomes the proposal to introduce a New Local Government (Finance) Bill which presents an opportunity to modernise the current legislative framework relating to local government finance and Councillors' remuneration in Northern Ireland.

\* While the proposed legislation, especially in relation to the capital finance system, aims to give greater freedom to Northern Ireland Local Authorities, the Council would urge that this greater freedom is not constrained through the use of regulations.

It was further resolved to make the following comments on the specific clauses of the Bill.

### **Clause 1(2) requires a Council to designate an officer of the Council as its Chief Financial Officer.**

\* The Council notes the intention to separate the roles of Chief Executive and Chief Financial Officer (something which was technically possible under the 1972 Act) particularly in light of the responsibilities placed on the Chief Financial Officer in submitting a report on the robustness of the estimates of the Council (clause 4); reporting to the Council the adequacy of financial reserves (Clause 6); and reviewing the Council's affordable borrowing limit (Clause 13).

However the proposed use of the term Chief Financial Officer in this case would cause confusion as it is the local government equivalent of "Accounting Officer" used in the Civil Service – both of which denote the head of the paid service and the person ultimately responsible for the direction of the organisation's resources. If left unresolved this could lead to a situation where the Chief Executive could be perceived to be accountable to the Chief Financial Officer something which would not add clarity – especially for the public, and which could potentially lead to organisational paralysis. This is compounded by the fact that the role of the "Chief Financial Officer", as used in the Bill, is not defined.

It is also noted that the proposed constitution for councils prepared by the Department of the Environment uses the terms Chief Finance Officer and Head of Financial Services to describe the senior finance role. As the Department is sponsoring both documents it is suggested that a consistent approach be adopted and that the terms in the proposed constitution are used in the Bill to promote clarity and in large part replicate what exists in other parts of the public service.

It is noted that the Department proposes to take this forward in the forthcoming Local Government (Re-Organisation) Bill. In the event that RPA is postponed, the Council understands the Local Government (Finance) Bill will still proceed. In this eventuality, the Council advocates that, due to the important role of the most senior finance officer, provision should be made in the Local Government (Finance) Bill to separate these roles.

**Clause 7 makes provision for reserves specified in regulations under clause 6(1) to be designated controlled reserves, with a required minimum balance at the end of the financial year. The Chief Financial Officer must report to the Council on the reasons for a controlled reserve not achieving the minimum level, and any action considered necessary to prevent a recurrence in the following year.**

\* The Council shares the view of Finance Officers that, in the spirit of financial freedom, no reserves should be designated controlled reserves, as is the case in the GB regulations that were derived from the Local Government Act 2003.

The DOE has advised that initial modelling has indicated that the statutory formula currently used to calculate the resources element of the General Grant is suitable for calculating the rates support grant for the eleven new Councils. An equality monitoring exercise on the statutory formula is carried out on an annual basis and this continues to show no adverse impact. The Department has however, conceded that there will be a need to review the key services used in the expenditure components of the formulae whenever Central Government functions are transferred under RPA.

The DOE has also advised that an EOIA on the Draft Finance Bill is not necessary and the regulations for determining the amount of the rates support grant will be screened for equality impact and will also be subject to consultation.

**Clause 22 enables the Department to make regulations about the use of capital receipts.**

The Council acknowledges the greater flexibility in the bill for the use of capital receipts and welcomes the removal of the requirement for capital receipts to be applied in the first instance against any money borrowed by the Council for the purposes of acquiring that asset, as sometimes this could result in significant financial penalties for early redemption.

**Clause 27 makes provision for the Department to provide a rates support grant to district councils for each financial year.**

The Council endorses that the statutory formula for the rates support grant needs to be reviewed post RPA to confirm that it continues to meet its objectives, especially in light of the establishment of new local authorities with new functions and functions that will transfer from central to local government.

Furthermore, the Council wish to place on record its view that the rates support grant must be adequately resourced.

**Clause 34 gives the Department power to make regulations for the establishment of an independent panel to advise the Department on payments to Councillors.**

The Council welcomes the establishment of an independent panel to advise the Department on payments to Councillors to bring Northern Ireland into line with the rest of the United Kingdom, where independent panels already exist to consider the level and system of Councillors' allowances.

**Clause 36 allows a district council to make payments for any purpose which in its opinion are in the interests of, and will bring direct benefit to, the council, its district or any part of its district, or the inhabitants of the district or any part of its district.**

The Council notes proposals to include the general power of well-being in the forthcoming Local Government (Re-organisation) Bill and that it is considered necessary to retain this provision until such time as that Bill comes into operation. The Council accepts this but requests in the meantime that the current limits on expenditure for special purposes be reviewed as they are deemed to be too low.

In conclusion, the Council broadly welcomes the steps taken to modernise the Local Authority legislative framework in this Bill and the introduction of best practice. In addition, the Council would wish to be consulted with on development of any subsequent regulations that will be drafted.

I hope that this is of assistance to you.

Yours faithfully

Amanda Martin  
Principal Administrative Officer  
Ards Borough Council  
2 Church Street  
Newtownards  
BT23 4AP  
Tel: 02891 824190

**Derry City Council - Written Submission to the Local Government (Finance) Bill**



Derry City Council

Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

Dear Mr McCann

## **Local Government Finance Bill**

I refer to your letter dated 30 April 2010, inviting views on the above proposed bill for consideration by the Committee for the Environment at Committee Stage. Derry City Council is pleased to be given the opportunity to comment on the proposals in the Finance Bill and we trust that our comments will be taken into account when developing the final legislation.

I wish at the outset to reiterate that the Derry City Council welcomes the proposal to introduce a New Local Government (Finance) Bill and the opportunity to modernise the current legislative framework relating to local government finance and Councillors' remuneration in Northern Ireland.

The proposed legislation, especially in relation to the capital finance system, aims to give greater freedom to Northern Ireland Local Authorities and would urge that this greater freedom is not constrained through the use of regulations and we trust in any case that there will also be adequate consultation with Local Government when the regulations are drafted.

Derry City Council would also make the case that there should be adequate legislative provision to support important new initiatives and models for service delivery in the future. This includes powers to participate in Public Private Partnerships (PPP), Public Finance Initiatives (PFI) or Local Asset Backed Vehicles (LABV). It is envisaged that these types of initiatives may be required in order for Councils to put in place arrangements for service delivery models, for example Waste Management, and to effectively manage their assets.

Derry City Council would wish to make the following comments on the specific clauses of the Bill.

**Clause 7 makes provision for reserves specified in regulations under clause 6(1) to be designated controlled reserves, with a required minimum balance at the end of the financial year. The chief financial officer must report to the council on the reasons for a**

## **controlled reserve not achieving the minimum level, and any action considered necessary to prevent a recurrence in the following year.**

Derry City Council would advocate that in the spirit of financial freedom no reserves should be designated controlled reserves, as is the case in the GB regulations that derived from the Local Government Act 2003.

Council would also expect that the recent guidance from DOE issued in December 2009 with regard to minimum balances for the District Fund, which advised that Councils should plan for a District Fund balance above 5% as part of their Rates Estimates should be sufficient. This would fulfill the objective of clause 6(1) of the draft Finance Bill without designating it as a controlled reserve. Councils would also be expected to follow guidance given in the Prudential Code for capital finance.

## **Clause 22 enables the Department to make regulations about the use of capital receipts.**

Derry City Council would acknowledge the greater flexibility in the bill for the use of capital receipts and would welcome the removal of the requirement for capital receipts to be applied in the first instance against any money borrowed by the Council for the purposes of acquiring that asset, as sometimes this could result in significant financial penalties for early redemption.

## **Clause 27 makes provision for the Department to make a rates support grant to district councils for each financial year.**

Derry City Council would be concerned if the current statutory formula used for the allocation of resources grant were to be subsequently applied to the allocation of rates support grant. It is the Transition Committee's strong view that the current statutory formula needs to be immediately reviewed to confirm post RPA that it continues to meet its objectives, especially in light of the establishment of new local authorities with new functions and functions that will transfer from central to local government.

There is also an urgent need for more resources to be provided by Central Government to ensure that the rates support grant achieves the objective of equalisation amongst the New Councils as one of the key principles underpinning the RPA process. Resources allocated should also be ring-fenced to avoid cuts such as occurred this year when the General Grant (Resources) was cut by 5%, impacting on the poorest Councils only.

It is the stated policy of Derry City Council that in any review of the statutory formulae for a rates support grant measures are used to ensure that TSN is fully applied and that Central Government commits fully to provide sufficient financial resources to ensure that post RPA that no Council is at a disadvantage, due to a poor wealth base, in providing essential public services.

In this regard, it is the Council's view that a full EQIA be carried out to ensure equity in the distribution of the rates support grant.

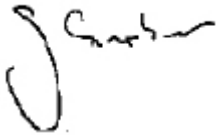
## **Clause 34 gives the Department power to make regulations for the establishment of an independent panel to advise the Department on payments to Councillors.**

Derry City Council welcomes the establishment of an independent panel to advise the Department on payments to Councillors to bring Northern Ireland into line with the rest of the United Kingdom, where independent panels already exist to consider the level and system of Councillors' allowances.

**Clause 36 allows a district council to make payments for any purpose which in its opinion are in the interests of, and will bring direct benefit to, the council, its district or any part of its district, or the inhabitants of the district or any part of its district.**

Derry City Council notes that it is proposed to include the general power of well-being in the forthcoming Local Government (Reorganisation) Bill and that it is considered necessary to retain this provision until such time as that Bill comes into operation. The Transition Committee would accept this but request in the meantime that the current limits on expenditure for special purposes be reviewed as they are too low.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. G. ...', written over a faint horizontal line.

City Treasurer

**Derry and Strabane Transition Committees - Written Submission to the Local Government (Finance) Bill**



25th June, 2010.

Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247  
Parliament Buildings  
Stormont Estate  
BELFAST BT4 3XX

Dear Mr McCann

**Local Government Finance Bill**

I refer to your letter dated 30 April 2010, inviting views on the above proposed bill for consideration by the Committee for the Environment at Committee Stage.

I wish at the outset to reiterate that the Transition Committee for the Derry and Strabane District Council welcomes the proposal to introduce a New Local Government (Finance) Bill and the opportunity to modernise the current legislative framework relating to local government finance and Councillors' remuneration in Northern Ireland.

The proposed legislation, especially in relation to the capital finance system, aims to give greater freedom to Northern Ireland Local Authorities and would urge that this greater freedom is not constrained through the use of regulations and we trust in any case that there will also be adequate consultation with Local Government when the regulations are drafted.

The Transition Committee for the Derry and Strabane District Council would also make the case that there should be adequate legislative provision to support important new initiatives and models for service delivery in the future. This includes powers to participate in Public Private Partnerships (PPP), Public Finance Initiatives (PFI) or Local Asset Backed Vehicles (LABV). It is envisaged that these types of initiatives may be required in order for Councils to put in place arrangements for service delivery models, for example Waste Management, and to effectively manage their assets.

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Derry City Council Offices, 98 Strand Road, Derry, BT48 7NN. Tel: (028) 7137 6507/8  
Strabane District Council, 47 Derry Road, Strabane, BT92 8DY. Tel: (028) 7138 2204



The Transition Committee for the Derry and Strabane District Council would wish to make the following comments on the specific clauses of the Bill.

**Clause 7 makes provision for reserves specified in regulations under clause 6(1) to be designated controlled reserves, with a required minimum balance at the end of the financial year. The chief financial officer must report to the council on the reasons for a controlled reserve not achieving the minimum level, and any action considered necessary to prevent a recurrence in the following year.**

The Transition Committee for the Derry and Strabane District Council would advocate that in the spirit of financial freedom no reserves should be designated controlled reserves, as is the case in the GB regulations that derived from the Local Government Act 2003.

The Transition Committee would also expect that the recent guidance from DOE issued in December 2009 with regard to minimum balances for the District Fund, which advised that Councils should plan for a District Fund balance above 5% as part of their Rates Estimates should be sufficient. This would fulfill the objective of clause 6(1) of the draft Finance Bill without designating it as a controlled reserve. Councils would also be expected to follow guidance given in the Prudential Code for capital finance.

**Clause 22 enables the Department to make regulations about the use of capital receipts.**

The Transition Committee for the Derry and Strabane District Council would acknowledge the greater flexibility in the bill for the use of capital receipts and would welcome the removal of the requirement for capital receipts to be applied in the first instance against any money borrowed by the Council for the purposes of acquiring that asset, as sometimes this could result in significant financial penalties for early redemption.

**Clause 27 makes provision for the Department to make a rates support grant to district councils for each financial year.**

The Transition Committee for the Derry and Strabane District Council would be concerned if the current statutory formula used for the allocation of resources grant were to be subsequently applied to the allocation of rates support grant. It is the Transition Committee's strong view that the current statutory formula needs to be immediately reviewed to confirm post RPA that it continues to meet its objectives, especially in light of the establishment of new local authorities with new functions and functions that will transfer from central to local government.

There is also an urgent need for more resources to be provided by Central Government to ensure that the rates support grant achieves the objective of equalisation amongst the New Councils as one of the key principles underpinning the RPA process. Resources allocated should also be ring-fenced to avoid cuts such as occurred this year when the General Grant (Resources) was cut by 5%, impacting on the poorest Councils only.

It is the stated policy of the Transition Committee that in any review of the statutory formulae for a rates support grant measures are used to ensure that TSN is fully applied and that Central Government commits fully to provide sufficient financial resources to ensure that post RPA that no Council is at a disadvantage, due to a poor wealth base, in providing essential public services.

In this regard, it is the Transition Committee's view that a full EQIA be carried out to ensure equity in the distribution of the rates support grant.

**Clause 34 gives the Department power to make regulations for the establishment of an independent panel to advise the Department on payments to Councillors.**

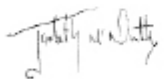
The Transition Committee for the Derry and Strabane District Council welcomes the establishment of an independent panel to advise the Department on payments to Councillors to bring Northern Ireland into line with the rest of the United Kingdom, where independent panels already exist to consider the level and system of Councillors' allowances.

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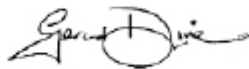
The Transition Committee for the Derry and Strabane District Council notes that it is proposed to include the general power of well-being in the forthcoming Local Government (Reorganisation) Bill and that it is considered necessary to retain this provision until such time as that Bill comes into operation. The Transition Committee would accept this but request in the meantime that the current limits on expenditure for special purposes be reviewed as they are too low.

Finally, The Transition Committee for the Derry and Strabane District Council would wish to attend the Committee meeting to give evidence.

Yours sincerely



Cllr Jeriath McNulty  
Chairman TC  
Strabane



Cllr Gerard Diver  
Chairman TC  
Derry

## arc 21 - Written Submission to the Local Government (Finance) Bill

Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247  
Parliament Buildings

Stormont Estate  
Belfast  
BT4 3XX

18 June 2010

Dear Mr McCann

## **Local Government (Finance) Bill**

### **Introduction**

I refer to your letter of 30 April 2010 to SOLACE inviting views on the proposed Local Government (Finance) Bill which has commenced Committee Stage at the Committee for the Environment.

arc21 would like to respond to the invitation to comment on the Bill as it progresses through the legislative process, following on from our response, on 29 October 2009, to the Draft Local Government (Finance) Bill issued by the Local Government Policy Division.

### **General Comments**

At the outset, arc21 would like to state that we are in favour of the Department's proposal to modernise the current legislative framework relating to local government finance and Councillor's remuneration in Northern Ireland.

The close involvement of local government is essential to the successful outcome of the updated legislative framework and opportunities to comment throughout the whole process leading up to enactment is therefore a crucial element of the process.

It is noted that, in the Departmental Response document issued in March 2010, it is the intention of the Department to consult with local government throughout the process and in particular with the Association of Local Government Finance Officers (ALGFO) and this is to be welcomed.

In our view it is essential that the legislative framework is brought up to date to assist the sector in dealing with the financial challenges and opportunities being faced in the years ahead. In this regard the proposed updating of the regulations of local government finance is timely.

arc21 also welcome the innovative feature of the proposed new framework which will allow district councils, and therefore Joint Committees, greater freedom to manage their own financial affairs.

### **Relevance to arc21 Joint Committee**

You may be aware that arc21 was established by the Department of the Environment under section 19 of the Local Government Act (Northern Ireland) 1972, by the Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2004.

The powers of arc21 were further enhanced, in 2007, by the Local Government (Constituting a Joint Committee a Body Corporate) (Amendment) Order (Northern Ireland) 2007. Of particular note in the 2007 Order, Part V of the 1972 Act (Financial Provisions) became applicable to arc21 as it applies to a council.

In terms of application to arc21 Joint Committee, we had suggested to the Local Government Policy Division that the Department take the opportunity to expressly state, in the Finance Bill, the provisions that would apply to Joint Committees i.e. similar to Schedule 7 of the 1972 Act.

The Departmental Response to the consultation document has stated that, due to the variety of work undertaken by the Joint Committees, it would be more appropriate to introduce subordinate legislation to amend the relevant Orders.

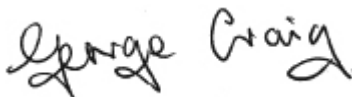
Although it would, in our opinion, still be preferable to make provision for arc21 Joint Committee in the Local Government (Finance) Bill, nonetheless we accept that updating the 2004 and 2007 Orders should deliver the same result.

The issues for arc21 concern the specific clauses that will apply and the timing of the updating of the Order and this will now be addressed through discussions with the Department.

## **Conclusion**

In conclusion, arc21 welcomes the new modernisation of local government finance as outlined in the Bill and the increased flexibility proposed therein and would hope that the comments made are helpful to the Environment Committee in developing the final proposals.

Yours sincerely

A handwritten signature in black ink that reads "George Craig". The signature is written in a cursive, slightly slanted style.

George Craig  
arc21  
Corporate Services Director

## **Lisburn City Council - Written Submission to the Local Government (Finance) Bill**



LISBURN  
CITY COUNCIL

Head Office Centre, The Strand Lisburn, BT27 4BL Tel: 028 9250 0250  
www.lisburn.gov.uk  
Sinn Féin / Sinn Féin / Sinn Féin  
sinnfein@lisburn.gov.uk

Our Ref: 1.8/6

27 May 2010

Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247, Parliament Buildings  
Stormont Estate  
BT9 5AS3  
BT9 3XX

Dear Mr McCann

**RE: THE DRAFT LOCAL GOVERNMENT (FINANCE) BILL-  
CONSULTATION DOCUMENT**

At its meeting of the 27 October 2009, Lisburn City Council agreed the attached  
response to the above Consultation. It was further agreed on the 27 May 2010 to  
forward this in response to your request for written evidence.

Yours sincerely

**Leah Scott**  
ASSISTANT DIRECTOR OF CORPORATE SERVICES



Lisburn is City for everyone

**David Rigg**  
Assistant Corporate Services  
Director  
028 9250 0250

**John McDonagh**  
Assistant Corporate Services  
Director  
028 9250 0250

**Ann Hume**  
Assistant Corporate Services  
Director  
028 9250 0250

# Lisburn City Council Response to Consultation on Finance Bill

September 2009

## **Introduction**

Lisburn City Council welcomes the opportunity to respond to the Department of Environment Consultation on the Draft Local Government (Finance Bill) for Northern Ireland.

Lisburn City Council makes the following comments on the bill:

### ***Part 1 – Financial Administration***

#### **General**

The Council would welcome further clarification on the role of the Chief Financial Officer, in order to designate the duty to the appropriate officer. It is the Council's view that the Chief Executive should retain the role of Chief Financial Officer.

#### **Annual Budget**

The Council welcomes the requirement for a report on the "robustness" of the estimates when presented to the Council for approval. The Council, and standing committees currently receives a report on the estimates from the management team. Further clarification on the definition of "robustness" is required to ensure that the Chief Financial Officers report is adequate.

#### **Reserves**

The Council accepts that the management of reserves is essential in ensuring that rate-payers funds are efficiently and effectively managed. The introduction of controlled reserves, and imposition of regulations on recommended reserves balances, will ensure that central government has ultimate control over the Council reserves.

In order to ensure that local Councils retain sufficient autonomy, regulations should allow sufficient flexibility to allow Councils to accumulate adequate reserves to achieve medium and long-term strategic objectives. Further clarification on what constitutes "controlled reserves" is also required.

The Council has limited control over the consolidation of reserves between Lisburn City Council and Castlereagh Borough Council. The new Council will also have limited control over the costs of transition to reformed local government, which could have a significant effect on reserves balances. Therefore, phased implementation of the regulations should be considered.

### **Borrowing**

The Council welcomes the introduction of more flexible arrangements for borrowing by removing the need to obtain prior approval of the Department for Environment. The Council also agrees that it is best practise to commit to borrowings that it can afford to repay.

Compliance with the Prudential Code will introduce more detailed reporting on the Councils financial standing in the context of borrowing. The Council would support the increased transparency and improved information, which this will bring to all stakeholders.

### **Affordable Borrowing**

It would appear that a degree of control would be retained by the Department, through the introduction of regulations on how a council determines and reviews an affordable borrowing limit. It is difficult to comment on the Councils view of the proposed regulations. The Council would not be supportive of an overly bureaucratic monitoring process, in addition to its own accounting controls.

The Council has limited control over the consolidation of borrowing between Lishum City Council and Castlereagh Borough Council. The affordability of this borrowing will be reduced through the establishment of the new Council, with a reduced rates base given the new boundaries. This would result in disproportionate borrowing to income generated and may be outside the limits recommended by the regulations.

In addition, in order to ensure that all rate-payers receive comparable levels of Council services, the ability to invest in capital expenditure should not be restricted to resource-rich authorities. The Boundaries commissioner's recommendations will result in a significant portion of the joint Councils transferring to the new Belfast City Council.

The Department may wish to consider interim arrangements to allow for the transition to the 11 Council model.

### **National Economic Reasons**

The legislation proposes to introduce limits to borrowings for "national economic reasons". A definition of these circumstances in the legislation or supporting regulations should be provided. Regulations should clearly outline the treatment of agreed or schemes in progress in these circumstances.

### **"Credit Arrangements"**

The Council supports the exclusion of trade creditors and short-term liabilities from this calculation as working capital balances. Only long-term finance should be included in the calculation of "credit arrangements for this purpose".

The legislation requires further clarity on the definition of a "qualifying liability" including the definition of "the date for performance" and what is included as a "prescribed liability".

### **Investments**

The Council welcomes the introduction of powers to invest Council funds.

### **Part 2 – Grants to Councils**

The Council accepts the provision in the legislation to establish the two grants for de-rating and the Rates Support.

### **Part 3 – Payments to Councillors**

The Council accepts the consolidation of legislation to one Finance Bill will remove any uncertainty in the legislation.

The Council supports the introduction of independent assessors to recommend remuneration to Councillors and the publication of a scheme of allowances. Any recommendations should allow Councils the flexibility to make payments to Councillors to undertake duties as the Council requires. Consideration should also be given to whether the costs associated with the establishment of the panel would outweigh the benefit over the process, which is already in place.

The Council welcomes the decision to repeal section 38 in the Local Government 1972 Act, in favour of allowing Councils the flexibility to decide if attendance at a conference is in the "interest of the district".

### **Part 4 – Miscellaneous Powers to make Payments**

The Council accepts the consolidation of legislation to one Finance Bill will remove any uncertainty in the legislation. The Council suggests that consideration should be given to the removal of restriction of Section 38 to payments in connection with "a particular event" to extend this to cover cases in general.

### **Conclusion**

The Council welcomes the new Finance Bill and the increased flexibility it proposes.

The Council cannot comment on the additional resources, which will be required to comply with the increased regulations from central government. The Council would request that the extent of monitoring would be "light touch" and incorporated into the existing audit cycles.

## **Newtownabbey Borough Council - Written Submission to the Local Government (Finance) Bill**

### **Response to the Environment Committee invitation to comment on the Local Government (Finance) Bill**



The Council welcomes the opportunity to comment on the above Bill and trusts that this response will be found helpful.

The Council would support the main aim of the Bill to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland. The greater freedom proposed for Councils in managing their financial affairs, without prior consent of the Department, is welcomed and it is hoped that this is not constrained through excessive regulation.

Clauses 4(1) and 6(2) impose duties on the Chief Financial Officer to report on the robustness of the estimates and the adequacy of any proposed financial reserves. Clear guidance is needed on the factors the Department considers appropriate to determine robustness, since the process of setting budgets and financial balances relies heavily on estimation and the forecasting of key variables.

Clause 9(1). Other funds established under this power should not be prescribed as controlled reserves under clause 7. Guidance should be issued by the Department on the criteria for classification as a "controlled reserve" and examples of funds or reserves which would be unlikely to be controlled.

Clause 13. The regulations need to allow councils to borrow to finance any unfunded capital balances which are extant at the commencement of the regulations.

Clause 23. The power to invest is granted to councils, however restrictions on the types of assets to be invested in are not mentioned.

Clause 35. The power to establish a panel to advise on payments by councils to Councillors is welcomed.

June 2010

**Northern Ireland Local Government Association  
(NILGA) - Written Submission to the Local  
Government (Finance) Bill**



Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247 Parliament buildings  
Stormont Estate  
BELFAST  
BT4 3XX

17 June 2010

Dear Mr McCann

Thank you for your letter dated 30 April 2010 seeking the views of the Northern Ireland Local Government Association (NILGA) on the Local Government (Finance) Bill. NILGA is pleased to be able to have an opportunity to comment on the proposals in the Bill and we trust that our comments will be taken into account when developing the final legislation.

This response has been developed in liaison with Association of Local Government Finance Officers (ALGFO) and the National Association of Councillors (NAC).

#### General

1. NILGA would share ALGFO concern that the proposed Finance Bill does not make adequate provision to support important new initiatives and models for service delivery in the future e.g. Waste Management. Councils currently have no powers to participate in Public Private Partnerships or Public Finance Initiatives. Consideration of whether the existing legislative framework supports such initiatives is required and if further amendments to the legislative framework relating to local government finance are required.
2. NILGA would also support the view that there is a need to update the limit referred to in Section 100 of the 1972 Act or subsequent amendment and would suggest that the Department should have the power to amend the limit by regulation.
3. The NILGA written response to the public consultation on the Finance Bill had recommended the Finance Bill includes provision for the inclusion of social clauses in public procurements including for example consolidation of the DFP "Guidance on Equality Of Opportunity And Sustainable Development In Public Sector Procurement" as referred to in DAC(DFP) 05/08; the proposals outlined by the Construction Industry Federation Northern Ireland Task Group in relation to promoting equality and sustainable procurement in construction; and the Scottish Social Enterprise Coalition guidance on Community Benefit Clauses.
4. It is understood the Department proposes to make an order (using powers available in the Local Government (Best Value) Act (Northern Ireland) 2002) to enable councils to

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include social clauses in their procurement contracts to the extent that they are necessary or expedient to achieve Best Value. NILGA would urge this work is completed on a timely basis.

#### **Part 1 Financial Administration**

5. Section 96 (5)(a) of the 1972 Act currently requires all disposals of land for less than best price to be approved by the Department. It is recommended Section 96 should be repealed and replaced with an enabling power to make regulations. The Regulation should detail the purpose and limitations that would apply to disposals of land at less than best price including safeguards and scrutiny mechanisms necessary to prevent any possible mal-practice.
6. In relation to Clause 1 of the proposed Local Government (Finance) Bill, it is NILGA's view that, in accordance with CIPFA guidance, legislation is made to enable the separation of roles between that of the Chief Executive and the Chief Financial Officer and that the Department needs to make regulations prescribing the qualifications required for a Chief Financial Officer.
7. The local government accounting framework is very technical and therefore the Chief Financial Officer should be a professionally qualified accountant and subject to continual professional development requirements. The requirements of clauses 4(1) and 6(2) (robustness of estimates and adequacy of reserves) and indeed clause 7(3) (adequacy of controlled reserves) serve to support the view on qualifications.
8. In relation to Clause 4(1) NILGA would support the ALFGO view that clarification is required on the concept of robustness pertaining to an estimate. The Department should issue guidance on the issues to be considered by the Chief Financial Officer in order to determine whether estimated figures are robust.
9. In relation to Clause 7(1), NILGA shares the concern that the legislation allows the Department to specify any reserve a controlled reserve, if it so wishes. This would not be compatible with the objective of giving local authorities freedom to manage their own financial affairs.
10. NILGA is of the view that other funds established under Clause 9(1) should not be subject to any departmental control and therefore should not be designated as controlled reserves in accordance with Clause 7.
11. NILGA welcomes the removal of the legislative requirement to obtain departmental approval to borrow money and the inclusion of a power to borrow for any purpose.
12. Clause 4 requires the Chief Financial Officer to submit a report on the robustness of the estimates of the Council; Clause 6 requires the Chief Financial Officer to report to the Council on the adequacy of financial reserves. NILGA would suggest that there should be a requirement to report to the Council on the review of the affordable borrowing limit.
13. In relation to Clause 14 (2), it is NILGA's view that the legislation should restrict this provision to circumstances where a local authority has disregarded its duty or obligation under Section 13.

14. In relation to credit arrangements NILGA endorse the ALGFO viewpoint. It is ALGFO's view that trade creditors should be excluded from the definition of a credit arrangement as trade creditors are part of the working capital requirement and not long term debt. It is unclear whether Clause 17(3) (b) removes trade creditors from credit arrangements and therefore from the determination of the affordable borrowing limit. We are also concerned that longer-term liabilities such as provision for the closure and aftercare costs of landfill sites are to be included in credit arrangements. In essence Section 17 is confusing and it is unclear what liabilities are to be considered as credit arrangements. Furthermore there is no definition of what constitutes a prescribed liability in accordance with Clause 17(3) (c). It is ALGFO's view that the legislation should be amended to provide clarity and remove any doubt about what constitutes a credit arrangement and in particular what is a qualifying liability.

15. Capital receipts – It is ALGFO's interpretation that the new provisions remove the requirement for capital receipts to be applied in the first instance against any money borrowed by the Council for the purpose of acquiring that asset. However Clause 22 implies that by regulation the Department may require the capital receipt to be used to meet debts or other liabilities. NILGA would support ALGFO's view that in principle the legislation gives local authorities freedom to manage their own financial affairs and this is another example where such freedom can be constrained by regulation by the Department. It is our view that departmental control in this area is unnecessary and Clause 22 should be removed.

#### **Part 2 Grants to Councils**

16. NILGA welcomes the proposed extension of the legislation to allow all Departments, and not just DoE, to pay grants for other purposes to Councils.

17. Rates support grant –NILGA is concerned that Clause 27(6) is included to legislate specifically that no grant could be made available.

#### **Part 3 Payments to Councillors**

18. NILGA welcomes the commitment from the Department to implement outstanding recommendations from the Councillors Remuneration Working Group report (CRWG) (2006).

19. NILGA welcomes the consolidation of all provision dealing with payments to Councillors into one Act. Councils currently have a scheme of allowances that are generally available through publication schemes and therefore the regulations to publish a scheme of allowances will not have a major burden on Councils.

20. NILGA also welcomes the enactment of Clause 33 and the repeal of Section 38 of the 1972 Act, removing some of the restrictions on the payment of expenses incurred by Councillors in attending meetings and conferences. NILGA concurs with the ALGFO view that Section 38 of the 1972 Act was overly restrictive and inevitably led to situations of dispute between Members and Officers on the eligibility of certain expenses for attending meetings and conferences.

21. NILGA also welcomes the proposed legislation to facilitate the establishment of an independent remuneration panel to secure a common framework of allowances and equitable treatment for all councillors in Northern Ireland. We agree that the Department will appoint the independent chair and members for the Northern Ireland remuneration panel and that the process currently in place for public appointments will be utilised.

22. NILGA endorses the view that all expenses should be supported by appropriate evidence of expenditure incurred in accordance with HMRC requirements.

#### **Part 4 Miscellaneous powers to make payments**

23. NILGA supports consolidation of provisions relating to local government finance arrangements and payments by Councils into one piece of legislation.

24. In relation to Clause 36, payments for special purposes and the limit on expenditure imposed by Clause 39, NILGA on advice from ALGFO would query the requirement for this legislation in light of proposals to legislate for a general power of well being.

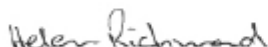
25. It would support the view that should it be necessary to retain Clauses 36 & 37, the wording of Clause 37(1) should be amended as follows:  
"A Council shall not make payments under Section 36 unless, in its opinion, the direct benefit accruing...." The proposed amendment is in accordance with the wording in Clause 36.

26. In relation to Clause 38 – public appeals, ALGFO has suggested an amendment to the wording replacing the phrase 'particular event' with the word 'circumstances'. NILGA would support this proposal.

#### **Conclusion**

27. In conclusion, NILGA broadly welcomes proposals to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland. **For further information or clarification on issues within this response, please contact Helen Richmond, at the NILGA Offices: [h.richmond@nilga.org](mailto:h.richmond@nilga.org) (028) 90798972**

Yours sincerely



HELEN RICHMOND  
Policy Officer

Northern Ireland Local Government Association (NILGA)  
Unit 58 Castlereagh Business Park, 4/8 Castlereagh Road, Belfast, BT5 6BQ.  
Tel: (028) 90798972 Fax: (028) 9079 1240 Email: [office@nilga.org](mailto:office@nilga.org) Website: [www.nilga.org](http://www.nilga.org)

## **Omagh District Council - Written Submission to the Local Government (Finance) Bill**

**Local Government (Finance) Bill – Consultation Response  
– 18/06/10**

Omagh DC welcomes the proposal to introduce a New Local Government (Finance) Bill and the opportunity to modernise the current legislative framework relating to local government finance and Councillors' remuneration in Northern Ireland.

The proposed legislation, especially in relation to the capital finance system, aims to give greater freedom to Northern Ireland Local Authorities and the council would urge that this greater freedom is not constrained through the use of regulations.

Clause 7 makes provision for reserves specified in regulations under clause 6(1) to be designated controlled reserves, with a required minimum balance at the end of the financial year. The chief financial officer must report to the council on the reasons for a controlled reserve not achieving the minimum level, and any action considered necessary to prevent a recurrence in the following year.

In support of the ALFGO position Omagh DC would advocate that in the spirit of financial freedom no reserves should be designated controlled reserves.

Clause 22 enables the Department to make regulations about the use of capital receipts.

In support of the ALFGO position Omagh DC would acknowledge the greater flexibility in the bill for the use of capital receipts and would welcome the removal of the requirement for capital receipts to be applied in the first instance against any money borrowed by the Council for the purposes of acquiring that asset, as sometimes this could result in significant financial penalties for early redemption.

Clause 27 makes provision for the Department to make a rates support grant to district councils for each financial year.

It is important that the rates support grant continues to be adequately resourced given that only the councils deemed to be in greatest need currently receive this grant.

Clause 34 gives the Department power to make regulations for the establishment of an independent panel to advise the Department on payments to Councillors.

In support of the ALFGO position Omagh DC welcomes the establishment of an independent panel to advise the Department on payments to Councillors to bring Northern Ireland into line with the rest of the United Kingdom, where independent panels already exist to consider the level and system of Councillors' allowances.

Clause 36 allows a district council to make payments for any purpose which in its opinion are in the interests of, and will bring direct benefit to, the council, its district or any part of its district, or the inhabitants of the district.

Omagh DC request that consideration be given in the interim to the need to review the current limits on expenditure for special purposes.

## **Banbridge District Council - Written Submission to the Local Government (Finance) Bill**



**BANBRIDGE**  
DISTRICT COUNCIL

CIVIC BUILDING, DOWNSHILL ROAD, BANBRIDGE CO. DOWN, NI42 3TE  
T: 028 4964 2000 F: 028 4066 0501 E: [info@banbridge.gov.uk](mailto:info@banbridge.gov.uk) W: [www.banbridge.gov.uk](http://www.banbridge.gov.uk)

LIAM HANNAWAY - CHIEF EXECUTIVE

Seán McCann  
Room 247  
Parliament Buildings  
Stormont Estate  
Belfast BT4 3XX

18 June 2010

Dear Sean

**RE: LOCAL GOVERNMENT (FINANCE) BILL**

I refer to your letter dated 30 April 2010 inviting views on the above proposed bill for consideration by the Committee for the Environment at Committee Stage.

This Council has reviewed and endorsed the response prepared by the Association of Local Government Finance Officers (NL).

In addition, Banbridge District Council wish to make the following additional comment on **Clause 27** which makes provision for the Department to make a rates support grant to District Council for each financial year.

We support ALGFO's call to have the resources element of the rate support grant ring fenced and protected from arbitrary reductions by the Department as part of its efficiency and cost cutting drive. This grant is essentially a compensating payment made to a restricted number of Council's deemed to have the weakest rate base in order to ensure that they are capable of providing the equivalent standard of service as Council's with a healthier rate base. To cut this element of grant would have a disproportionate negative ratcheting effect for individual Council's resulting in either inequality in service provision or a substantive increase in rates.

The Local Government (Finance) Bill may be an opportunity to provide a level of assurance to those Council's who rely on this element of grant to support a weaker rate base and is particularly important facing into a continuing period of financial restraint.

Thank you for your attention to this matter.

Yours sincerely

  
Patrick Camiskey  
Director of Corporate Services

DEVELOPING COMMUNITIES  
COMMUNITY PLANNING  
COMMUNITY SERVICES  
ECONOMIC DEVELOPMENT & REGENERATION  
ENVIRONMENTAL HEALTH

028 4966 0001  
028 4966 0100  
028 4966 0100  
028 4966 0100  
028 4966 0100



FINANCE  
TELEPHONE SERVICES  
LIBRARY SERVICES  
MARKETING SERVICES  
TECHNICAL SERVICES

028 4966 0001  
028 4966 0100  
028 4966 0100  
028 4966 0100  
028 4966 0100

## Appendix 4

### List of Witnesses

## List of witnesses who gave evidence to the Committee

Ms Julie Broadway, Department of the Environment

Ms Marie Finnegan, Department of the Environment

Mr Ivan Gregg, Department of the Environment

Mr Ian Maye, Department of the Environment

Mr Tommy McCormick, Department of the Environment

Mr Denis McMahon, Department of the Environment

Ms Marie Cochrane, Department of the Environment

Mr Dickson Holliday, Department of the Environment

Ms Lizanne Kennedy, Department of the Environment

Ms Brenda Mooney, Department of the Environment

Mr John Small, Department of the Environment

Mr Joe Campbell, Association of Local Government Finance Officers

Mr Robert Dowey, Northern Ireland Local Government Association

Councillor Sean McPeake, Northern Ireland Local Government Association

Councillor Evelyne Robinson, Northern Ireland Local Government Association

Ms Brona Slevin, Northern Ireland Local Government Association

Mr David Nicholl, Chartered Institute of Public Finance and Accountancy NI

Mr Philip Faithful, Strabane District Council

Councillor Thomas Kerrigan, Strabane District Council

Mr Joe Campbell, Derry City Council

## **Appendix 5**

# **Research Papers Requested by the Committee**





## Research and Library Service Briefing Paper

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10 November 2010

Helena Maginness and Suzie Cave

Local Council Spending via Special Powers and on Professional Subscriptions

Paper 000/00 NIAR 000-00

### **Background**

The Committee for the Environment have requested information on some of the local Councils on the following areas in order that they can assess how the new Local Government Finance Bill will impact upon the work of the councils;

- What is the spending limit, in cash terms, on spending for 'Special Purposes'?
- Can you provide examples of events/circumstances to which the above might apply? E.g. welcoming home a successful sports team
- Does the council pay for the subscriptions of its officers to professional bodies or do they pay themselves personally?
- Can you provide examples of professional bodies to which the above might apply?

The largest of the councils (according to population<sup>[1]</sup>) have been contacted (Belfast, Lisburn, Derry, Newry and Mourne, Craigavon, Newtownabbey and Ards) and the following information has been provided to inform the queries;

### **Belfast City Council**

The spending limit, in cash terms, on spending for 'Special Purposes' for 2010-11 is £309,733 (2009-10 £306,579).

Examples of events/circumstances to which the spending was applied for 2009-10;

### **Note from Abstract of Account 2010 - Operating Expenses**

	2009/10
	£
Fuel Stamp Scheme	19,561
Staff Travel Smartcard	6,000
Mary Peters Trust	5,000
Be Your Best Foundation	3,000
Ashfield Girls	2,000
Gaelic Football Match – Dublin City Council	1,738
Total	37,299

The only officer subscriptions that Belfast City Council pays for are Solicitors. Justification as per:-

EXTRACT FROM SOLICITORS (NI) Order 1976

Practising without certificate

20. — (1) Where—

(a) complaint is made to the Lord Chief Justice that a solicitor who has not in force a practising certificate entitling him to practise as a solicitor has wilfully and knowingly appeared, acted, or practised in any respect as a solicitor in any action, suit, matter or transaction and

(b) the matter of the complaint is proved to the satisfaction of the Lord Chief Justice; the Lord Chief Justice may impose upon the solicitor a fine not exceeding £100 and, in addition to or instead of imposing a fine, may suspend the solicitor from practising as such during such period as to the Lord Chief Justice may seem fit, or may order the name of the solicitor to be struck off the roll.

COMT decision on 12 December 1994.

On the basis that:-

"....there existed a statutory requirement that the officer must be and must continue to be registered by and/or be a member of a specified professional institution in order to carry out all the duties of his/her post and that without such registration/membership would be unable to carry out or continue to carry out all or part of the duties of his/her post."

## **Lisburn City Council**

In 2009-10, the limit for spending on Special purposes was £78,978 (2008-9: £79,536). In 2009-10 the Council spent £4,172 (2008-9: £37,041) Examples of expenditure included, Save our services Campaign (Lagan Valley Hospital).

The Council will pay the fees of employees where membership of a professional body is deemed essential to the post. The council will pay for one professional subscription a year for individual officers were deemed necessary.

"It is the decision of the Director, in liaison with Human Resources, whether it is essential to have a professional qualification. If a job specification is changed to either include or exclude then this needs to be objectively justified taking into account the above. It should also be noted

that the determination on the requirement for professional membership should be related to the post and not the postholder. It must be included in the job description for both job evaluation and be used if the post is or becomes vacant for public advertisement." Lisburn City Council, Policy on Payment of Professional Membership Fees, February 2005

Examples of payments include; the Chartered Institute of Personnel and Development, the Chartered Institute of Environmental Health, the Chartered Institute of Marketing and the Chartered Institute of Building.

## **Derry City Council**

The spending limit, in cash terms, on spending for 'Special Purposes' is £69,985 for 2010/11. The last example for Derry City Council in relation to using Section 115 was a sum of £5,667 paid out during 2003/2004 for costs associated with the Special Olympics Host Towns Programme.

Officers of Derry City Council must pay subscriptions to professional bodies personally. Examples of Professional bodies for which this would apply include;

Various Accountancy Bodies, Institute of Engineers, Institute of Leisure Management, Chartered Insurance Institute, British Computer Society

## **Newry and Mourne**

The spending limit from the Department for the Environment list for the year 2010/11 is £57,000. In 2009/10 they actually spent £7,480. This included £1,000 for the upkeep and electricity of clocks in the district, £3,000 for the Mayors Christmas party and £3,295 on the Arts.

The council does pay for the subscriptions of its officers to professional bodies but only where it is necessary in order to carry out their work. The post would have to specify that professional membership is necessary and then the purchasing department in the Council would process it. Professional bodies would include accountancy bodies such as ACCA and ACI and the officers in Environmental Health and Leisure would also need to be members of professional bodies.

## **Craigavon**

The limit on spending on "special purposes" for Craigavon Borough Council for 2010/11 is (as per their circular LG11/10 dated 13 May 2010) is £52,960.

Craigavon Borough Council spent £9,377 in 2009/10 and £7,409 in 2008/09. This expenditure was on Investors in People (IIP) Christmas events for staff through which staff were updated on IIP and such issues as the Corporate Plan and it also gave Council the opportunity to thank staff for their hard work during the year. The Corporate Management Team is currently drawing up proposals for arrangements for 2010/11 which will be scaled down considerably in comparison with the previous years.

The Council does not pay subscriptions to professional bodies for its officers' private memberships.

## **Newtownabbey**

For Newtownabbey Borough Council the spending limit for Special Purposes as advised by the Department of the Environment is £ 57,916 for 2010/11. This allowance is used for expenditure

for which the Council does not have other specific legal authority and qualifies under s115 Local Government Act 1972. Example - flooding relief payments to householders.

The Council pays 100% membership of professional bodies to officers who are required to hold a membership of a professional body as a condition of employment, which is supported and documented in a personnel specification. Additionally the Council supports officers (50% payment) who make application through the Continuous Learning/Professional Development Support Scheme. Examples of Professional bodies for which this would apply include;

Chartered Institute of Personnel Development, Chartered Management Institute, Association of Chartered Certified Accountants, Chartered Institute of Purchasing and Supply, Chartered Institute of Public Relations, Chartered Institute of Environmental Health, Chartered Institute of Building, Association of Building Engineers, Institute of Chartered Accountants Ireland

## **Ards**

Ards Borough Council's limit for expenditure on Special Purposes (section 115) is £47,165 for 2010/11 (£46,173 for 2009/10). The Council has not incurred any expenditure for Special Purposes for the last 5 financial years (2005/06 to 2009/10).

Ards Borough Council does not pay the subscriptions of officers to professional bodies. The officers pay their own subscriptions.

## **Private Firm/Company Memberships**

Having been in contact with representatives from a number of organisations, such as: the Chartered Institute of Personnel Development; the Chartered Management Institute; the Association of Chartered Certified Accountants UK and Ireland; and the Chartered Institute of Environmental Health, they have informed that:

If it is a requirement of the job, then the firm/company will generally pay the membership as it is essential for the individual to practice e.g. a surveying firm paying for an employee's membership of the Royal Institution of Chartered Surveyors, or an accountancy firm paying for an employee's membership to the Association of Chartered Certified Accountants etc.

[1][http://www.nisra.gov.uk/archive/demography/publications/annual\\_reports/2008/Table2.3\\_2008.xls](http://www.nisra.gov.uk/archive/demography/publications/annual_reports/2008/Table2.3_2008.xls)



Research and Library Service  
Briefing Paper

4th October 2010

Suzie Cave and Kirsty Bell

Role of  
Chief Financial Officers

Paper 000/00 NIAR 000-00

Questions were asked to each of the councils to find out whether they have separated the role of Chief Executive and Chief Financial Officer. They were also asked for information in relation to their capacity to appoint a Chief Financial Officer within existing staff. Variations of responses were received in terms of detail and content, which are presented in the table below.

Council	Current Situation and plans to separate CEO and CFO	Point of Contact
Antrim	No Separation - The CEO is the CFO. He signs off audits and people in accounts deal with the day-to-day running. Have no plans to separate the roles as yet- and not aware of the need to.	PA to Chief Executive
Ards	Response to come by email	PA to Chief Executive
Armagh	Response to come by email	PA to Chief Executive
Ballymena	No separation and no intention of separating the roles	PA to Chief Executive
Ballymoney	No separation of roles	PA to Chief Executive
Banbridge	No separation - CEO has final say and signs off for auditing purposes. Council has finance officer to carry out the day to day responsibilities.	Email to come from Dawn McDowell
Belfast	Separated roles - Director of Finance (Julie Thompson) and CEO (Peter McNaney)	PA to Chief Executive
Carrick	No separation - Have not received any communication on this and have yet to move on it.	Alan Caldwell
Castlereagh	No separation - no plans and unaware of the need to separate	PA to Chief Exec Shernelle Knox
Coleraine	No separation - CEO is Chief Financial Officer. They are aware of the Bill going through the Assembly and it depends on the outcome of that. Council will only change the roles if the legislation dictates that they should.	Director of Financial Services- David Bell
Cookstown	No separation - Their Director of Corporate Services, Ivor Paisley looks after finance, and CEO signs off for auditing. The council has does not have any qualified accountants. Could not recruit for a Chief Financial Officer internally, would have to recruit externally which would be an extra expense to the Council. Director of Corporate Services doe not in favour of the provision, as he feels like most Councils they do not have the capacity to have separate roles. In his opinion the lobby groups are fronted by Directors of finance and are not the voice of local government. He has stated that there is need for further consultation on this issue.	Director of Corporate Services Ivor Paisley
Craigavon	No Chief Executive at the moment- interviews to be held Thurs 30th September. Director of Corporate Services is	PA to Chief Executive

		Point of Contact
Council	Current Situation and plans to separate CEO and CFO currently Chief Financial Officer- it is likely that these responsibilities will be reverted back to CEO once a replacement is appointed.	
Derry City	Separate roles - City Treasurer and Chief Executive (Valerie Watts)	PA to Chief Executive Ken
Down	No separation - CEO and Financial officer. CEO has final say and finance officer performs the day to day running.	Montgomery and Shernell Knox
Dungannon	Not separated - Have a Director of Finance who has an accountancy background. The CEO has final say and signs off. Have a review of Efficiencies and Structures which is going to the council for consultation. Are aware of the legislation and the recommendation made by the Finance Officers Group. If such changes are to be made, it would need to be determined the level of accountancy qualification needed. There is such variation in qualifications, and councils have a range of qualifications within their staff.	PA to Chief Executive
Fermanagh	Not separated - CEO was originally director of finance and moved to CEO, therefore does both roles. CEO Brendan to ring back Mon- PA not aware of anything	PA to Chief Executive
Larne	Not separated - Financial Controller-George Boyd for day to day business. CEO has final say.- Liz Wilken to get back	
Limavady	Not separated - CEO has final say over the financial officer who conducts the day to day business. – Unaware of any plans to change this.	PA to Chief Executive
Lisburn	No separation - CEO is CFO- not aware of any plans to change	PA to Chief Executive
Magherafelt	No separation as far as they are aware. No plans to make any change	PA to Chief Executive
Moyle	To call back	
Newry and Mourne	To call back	
Newtownabbey	No separation - CEO and Director of finance –CEO has final say and signs off for auditing. Unaware of provisions under the LG (finance) Bill and no plans to make any changes as yet.	Gladys Matthews – PA to Chief Executive
North Down	No separation CEO still signs off for audits etc however unsure if any moves are being made to change that. T call back	PA to Chief Executive
Omagh	To call back	
Strabane	No separation - Chief Executive is head of Finance. No plans to change this	PA to Chief Executive

## Summary

This is the position across 21 councils as we are still waiting for information from 5 of the 26 councils (highlighted in yellow).

Of the 21 Councils that we received a response:

- 18 of them have a CEO who has the final say and signs off for auditing purposes and a Finance Officer/Director of Finance/ Financial Controller etc who conducts the day to day financial duties.
- 3 of the councils have separated their role of CEO and Chief Financial Officer – Belfast, Derry and Craigavon.
- Craigavon has separated the role due to circumstances where they currently have not got a CEO, and responsibilities have been delegated to the Director of Corporate Services. Once a new CEO has been appointed, it is likely the role will revert back to CEO.
- Apart from Derry and Belfast, the other 19 councils who responded appear to be unaware of plans to change their current situation. Craigavon is unique in that while they have currently separated their roles, they have informed that they will more than likely revert back to the CEO being the Chief Financial Officer.

From the responses it would appear that the majority of councils are either unaware of the need to separate the two roles under the proposed Local Government (Finance) Bill, or are aware of the provision, but feel there is no need/pressure to make any changes.

Taking that this is the accepted position across the 21 councils, I will get back to the Committee should there be any difference or change.



15 November 201

Suzie Cave

The Capacity of Councils to Separate the Role of Chief Executives and Chief Financial Officers

Paper 000/00 NIAR 000-00

This note refers to the Committee's query about the number of council Chief Executives (CX) who are qualified accountants, and whether there would be a requirement to recruit externally for a Chief Financial Officer (CFO) to separate the roles (in line with the CIPFA Statement on the Role of the Chief Financial Officer<sup>[1]</sup>), NILGA has collated and provided the following information.

17 Councils provided responses to the query. Of the 17:-

- Two councils already operate the system of separate role of CX and CFO.
- In three other councils the CX is a qualified accountant, two out of the three indicated that with any separation of the roles a CFO could be appointed internally, if necessary.
- Of the remaining 12 councils whose CX is not a qualified accountant, 11 have indicated that a separate CFO could be appointed internally.
- Overall only one council stated that a CFO would have to be recruited externally.

## Recommendations

A related issue that has been highlighted through this consultation by some councils, is that the Chief Financial Officer has in the past been appointed by councils under s54 of the Local Government Act 1972. This Section permitted the Council to designate any particular officer in that role, however as this has been viewed as the Accounting Officer role for councils, it has been the Chief Executive that has been designated.

It is considered that the removal of that designation (Chief Financial Officer) to another officer, without clearly stating in the legislation that the Chief Executive remains the Accounting Officer for the organisation, could have the potential to cause difficulties in terms of governance, leadership and accountability, as it will be unclear who is in charge of the organisation, who may direct its resources, and who is ultimately accountable for its entire operation.

In order to avoid this difficulty, it is recommended that the legislation should make it absolutely clear that while there may be a senior officer in charge of finance, this role is not that of Accounting Officer, and that setting the direction of the organisation, directing its resources, and being accountable for its entirety remains the sole responsibility of the Chief Executive.

## Further Issues

According to NILGA, there was a bit of discussion between themselves, the councils, and the Department over collecting this information, and making sure what they were asking for and why they were asking for it. Apparently at the start there was confusion among some over whether the legislation would include a requirement to appoint a separate CFO, and whether that post would need to be a qualified accountant.

The Department advised that it does not make reference in the Finance Bill that the Chief Financial Officer (CFO) must be a qualified accountant, or about the separation of the roles.

When the Bill goes through (subject to its final contents) the Department, however, intends issuing a local government circular to councils supporting the Chartered Institute of Public Finance and Accountancy (CIPFA) Statement, which includes a recommendation that the Chief Financial Officer should hold membership of a recognised professional accountancy organisation, be a key member of the councils leadership team, and implies there should be a separation of the 2 roles. The Department made reference to the note provided to the Committee which clarified the position (see the Departmental note attached with this briefing note).

[1] CIPFA, The Role of The Chief Financial Officer in Local Government (2010)  
[http://www.cipfa.org.uk/pt/download/role\\_of\\_CFO\\_in\\_LG\\_2010\\_WR.pdf](http://www.cipfa.org.uk/pt/download/role_of_CFO_in_LG_2010_WR.pdf)

## Appendix 6



## **Other Papers Submitted to the Committee**

### **Departmental Reply to Committee Queries on the Local Government (Finance) Bill**

Central Management Branch  
10-18 Clarence Court  
BELFAST  
BT2 8GB

Mrs Alex McGarel	Telephone: 028 90 5 40855
Clerk to the Environment Committee	Facsimile: 028 90 5 41169
Northern Ireland Assembly	Email: <a href="mailto:una.downey@doeni.gov.uk">una.downey@doeni.gov.uk</a>
Parliament Buildings	Your reference:
Stormont	Our reference:
Belfast BT4 3XX	

Date: 28 June 2010

Dear Alex,

#### **Draft Local Government (Finance) Bill – Environment Committee Query**

Following Departmental briefing on the Local Government Finance Bill on 10 June 2010, the Committee asked for further information as follows:

"The Committee would like further information on the mechanisms that will be put in place for external audit and advice and what opportunities there may be in this bill to do this. Members would also like to know how mandatory the guidance will be."

Current legislation requires each council to ensure that its financial management is adequate and effective and that the council has a good sound system of internal control which is regularly reviewed. In discharging this overall responsibility a council must ensure that proper arrangements are in place for the governance of its affairs and that those arrangements are consistent with the principles of the CIPFA/SOLACE Framework "Delivering Good Governance in Local Government".

Good practice would advocate that managing the risk of fraud and corruption is the responsibility within that organisation, from the senior management promoting an anti-fraud culture, to operational staff designing and implementing control systems to minimise risk.

The main responsibility of a council's internal audit function is to ensure that the council has reviewed its risk exposures; this includes identifying the possibility of fraud as a business risk. An element of the internal audit remit is to provide a council's Chief Financial Officer with an opinion on the whole of the council's risk management, control and governance practices. In relation to fraud this will include an examination of the adequacy of arrangements for managing the risk of fraud.

Existing legislation and an annual Accounts Direction issued by the Department, provide substantial detail on the proper practices for councils to adhere to in relation to accounting and internal control. This legislation also requires local government audit to be satisfied that proper practices have been observed. Failures in this regard or issues of concern on internal control would be addressed by local government audit and appropriate action taken.

The Local Government (NI) Order 2005 requires each council to ensure that its financial management is adequate and effective. Regulations made under the order (Local Government (Accounts and Audit) Regulations (NI) 2006 No. 89 as amended by 2006 No. 522) compel councils to have a sound system of internal control which is regularly reviewed. The Department is content that existing legislation and procedures provide sufficient scope and limitations for each council to apply and operate appropriate fraud prevention controls.

## **Statutory Guidance**

In the main, where Departmental guidance is of material consideration to a council they may have an obligation under the general law to have regard to that guidance. However, where guidance is statutory this imposes a legal duty on councils to have regard to that guidance in carrying out their functions.

I trust this information is of assistance. Should you require anything further, please contact me directly.

Yours sincerely

Una Downey  
DALO

[By Email]

## **Examiner of Statutory Rules Scrutiny of Delegated Powers**

1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of the Environment, in relation to powers to make subordinate legislation.

2. The Bill contains many powers to make subordinate legislation.

3. Part 1 of the Bill (financial administration) contains powers to make regulations subject to negative resolution in:

- clause 2(1) (accounting practices),
- clause 6(1) (maintenance of council reserves),
- clause 13 (duty of a council to determine and affordable borrowing limit),
- clause 14(1) (with the consent of DFP) (council borrowing limits for national economic reasons),
- clause 14(4) (with the consent of DFP) (exercise of council's power under clause 14(3) to transfer headroom in relation to the borrowing limit to another council),
- clause 17(2)(b) and (3)(c) (credit arrangements),

- clause 18(3) (control of credit arrangements),
- clause 19(2) (what is and what is not capital expenditure),
- clause 20(3) (capital receipts),
- clause 21 (non-money receipts),
- clause 22 (use of capital receipts), and
- clause 25(2) (guidance to councils).

These seem to be all very technical in nature, and negative resolution procedure seems appropriate as the level of Assembly scrutiny.

4. Part 1 also contains an order-making power in clause 24(9): the Department may make orders subject to negative resolution altering the sum specified in clause 24(8) (currently £10,000 — threshold for the High Court's power to appoint a receiver under clause 24(5) on the application of a lender to a council). The Department describes this as a "Henry VIII power" but indicates its view that negative resolution was appropriate. My initial view was that the power should perhaps be subject to draft affirmative procedure, so I considered the direct precedent for it. The power is similar to that for England and Wales in section 13(9) of the Local Government Act 2003: during its passage as a Bill at Westminster, that provision was considered by the Delegated Powers and Regulatory Reform Committee of the House of Lords. Although that Committee categorised the provision as a Henry VIII power, they did not express any concern about its being subject to negative resolution procedure (see the Sixteenth Report of the Delegated Powers and Regulatory Reform Committee of the House of Lords for Session 2002-03). In spite of the position in England and Wales under the 2003 Act, the Committee for the Environment may wish to consider pressing the Department on this with a view to making the power subject to draft affirmative procedure: an order under this provision would bring about a direct amendment of what is on the face of the Bill in respect of a jurisdiction of the High Court. This is a power that is likely to be exercised very occasionally so that draft affirmative procedure would not take up much Assembly time in plenary: the amount under the 2003 Act for England and Wales has not been altered from the original amount of £10,000; and the Department has indicated in its Delegated Powers Memorandum that there are no immediate plans to exercise this power for Northern Ireland; but as and when the power is exercised, it should perhaps be subject to a high degree of Assembly scrutiny, consistent with other provisions of the Bill allowing for direct amendments by subordinate legislation (see clause 40(2) mentioned at paragraph 7 below).

5. Part 2 of the Bill (grants to councils) essentially replaces what is in Articles 3 to 7 of the Local Government (Miscellaneous Provisions) (Northern Ireland) 2002: the main change is that the general grant in the 2002 Order is called rates support grant in Part 2 of the Bill. The powers to make subordinate legislation in Part 2 are subject to the same level of scrutiny as the powers they replace in the 2002 Order, and they seem to be appropriate.

- Clause 27(3) allows the Department to make regulations subject to draft affirmative procedure for determining the amount of rate support grant payable to councils in any financial year.
- Clause 28(2) and (3) allow the Department to make orders by what amounts to draft affirmative procedure reducing the amount payable to a council (a particular council since it only arises where there has been certain failure or excess on the part of the council concerned set out in a relevant report relating to that council by the local government auditor under Part 2 of the Local Government (Northern Ireland) Order 2005) by way of de-rating grant or rates support grant .

- Clause 28(6) allows the Department to defray any expenditure incurred in any financial year in the provision of services for a council by a body specified in regulations subject to negative resolution.

6. Part 3 of the Bill contains provision about payments to councillors. There are several powers to make regulations subject to negative resolution, which level of Assembly scrutiny seems to be appropriate.

- Clause 31 allows the Department to make regulations for the payment by councils of prescribed allowances and other payments.
- Clause 35 allows the Department to make regulations establishing a panel to advise the Department on payments by councils to councillors.

7. Part 4 of the Bill (miscellaneous powers to make payments) contains one power to make subordinate legislation. Clause 40(2) allows the Department to make orders subject to draft affirmative procedure substituting a different amount for any amount specified in clause 40(1). This seems to be appropriate, given that orders under this power, allowing for direct amendment of the Bill, are subject to draft affirmative procedure.

8. Part 5 of the Bill (supplementary) contains a power in clause 47(2) allowing the Department to make commencement orders: in accordance with standard practice, this is not subject to Assembly procedure.

9. There are no other matters to which I draw the attention of the Committee for the Environment in this regard.

Gordon Nabney  
Examiner of Statutory Rules  
7 September 2010

## **Departmental Briefing on Synopsis of responses to Consultation**

Mrs Alex McGarel  
Clerk to the Environment Committee  
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Email: [una.downey@doeni.gov.uk](mailto:una.downey@doeni.gov.uk)  
Your reference:  
Our reference:

Date: 30 November 2009

Dear Alex

### **Consultation on the Draft Local Government (Finance) Bill**

During the Environment Committee meeting on 10 September 2009, members requested a synopsis of responses to the consultation on the draft Local Government (Finance) Bill.

The consultation on the draft Local Government (Finance) Bill was issued on 24 July 2009 with comments due to be received by 31 October 2009. The Department received a total of 27 responses. A synopsis of the responses is attached.

I trust this is helpful.

Yours sincerely

Úna Downey  
DALO  
[By email]

## **Synopsis of Responses to Consultation on the Draft Local Government (Finance) Bill**

### **Introduction**

1. The Department of the Environment has prepared a draft Local Government (Finance) Bill. The main aim of the Bill is to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland.
2. The Department issued a consultation document, which included the draft Bill, on 24 July 2009, seeking comments by 31 October 2009.
3. This paper provides information on the responses to the consultation.

### **General**

4. The Department received a total of 27 responses to the consultation. The table overleaf shows a breakdown of the respondents.
5. 63% (17) of all respondents welcomed the Bill and the Department's proposals to modernise the current legislative framework relating to local government finance and councillors' remuneration. No respondents opposed the overall purpose of the Bill.
6. Four of the respondents (Disability Action, the Equality Commission for Northern Ireland, the Northern Ireland Judicial Appointments Commission and a district council) had no comments to make on any aspect of the proposals. A fifth respondent (a joint committee) noted the content of selected clauses, but did not comment on any of them.
7. 78% (21) of all respondents submitted comments on specific provisions in the Bill, as well as making comments of a general nature.

Responses to Consultation

Individual district councils

- Antrim Borough Council

## Responses to Consultation

- Belfast City Council
- Coleraine Borough Council
- Derry City Council
- Fermanagh District Council
- Limavady Borough Council
- Lisburn City Council
- North Down Borough Council
- Strabane District Council
- The change manager for Armagh City & District Council, Banbridge District Council and Craigavon Borough Council (reflecting the views of the RPA Finance Project Team acting for those three district councils) 1

## Joint committees (including joint committees constituted as bodies corporate and voluntary transition committees)

- arc21 4
- Ards and North Down Transition Committee
- SWaMP2008
- Transition Committee for Derry and Strabane District Councils

## Political parties (including local branches of political party members)

- Sinn Féin 2
- Social Democratic and Labour Party – Newry & Mourne District Executive

## Representative bodies

- Association of Local Government Finance Officers Northern Ireland (ALGFO) 2
- Northern Ireland Local Government Association (NILGA)

## Government departments or agencies

- Department of Finance and Personnel 1

## Professional bodies

- Chartered Accountants Ulster Society (CAUS) 2
- Chartered Institute of Public Finance & Accounting (CIPFA)

## Trade Unions

- Northern Ireland Public Service Alliance (NIPSA) 1

## Others

- An individual ratepayer 5
- Disability Action

## Responses to Consultation

- Equality Commission for Northern Ireland
- Northern Ireland Judicial Appointments Commission (NIJAC)
- PricewaterhouseCoopers LLP (PwC)

Total

27

8. A summary of the comments made concerning specific clauses is given below.

## **Part I – Financial Administration**

### **Clause 1(2), requirement for a council to designate an officer as its chief financial officer**

9. Ten respondents (four district councils, a change manager, a joint committee, ALGFO, CAUS, CIPFA and NILGA) commented on this clause.

- One district council stated that further clarification was needed on the role of the chief financial officer in order to ensure that duty was delegated to the appropriate officer, and that the chief executive should retain the role of chief financial officer.
- Eight respondents (four district councils, ALGFO, CIPFA, NILGA and one joint committee) stated that the Department would need to make regulations prescribing the qualifications required for a chief financial officer.
- Eight respondents (four district councils, ALGFO, NILGA and one joint committee) stated that the roles of chief executive and chief financial officer should be separated.

### **Clause 2 allows the Department to make regulations or issue guidance concerning the accounting practices to be followed by a district council, any committee of a council for which separate accounts are kept, or a joint committee of two or more councils.**

10. Thirteen respondents (seven district councils, a change manager, four joint committees and ALGFO) commented on paragraphs (1) and (2) of this clause.

- All of these respondents commented that they were content that in principle the proposed legislation will give district councils greater freedom to manage their own financial affairs, without having to obtain consent from the Department, but were concerned such freedom could be constrained through the use of central government regulations.
- Seven district councils and ALGFO noted that clarification is required on how central government intends to apply regulations.
- One district council stated that it would welcome the opportunity to engage closely with the Department in drafting the regulations under this Bill to ensure that they reflect the needs of local government in Northern Ireland and provide for the provision of a modern and responsive public service by district councils.

**Clause 4(1) requires the chief financial officer to report to the council on the robustness of the estimates of income and expenditure for the coming year submitted to it under clause 3.**

11. Thirteen respondents (seven district councils, a change manager, three joint committees, ALGFO and NILGA) commented on this clause. They asked for clarification of the concept of robustness, recommending that the Department should issue guidance on the exact issues to be considered by the chief financial officer in order to determine whether estimated figures are robust.

**Clause 6 enables the Department to make regulations requiring councils to maintain financial reserves.**

12. Two respondents (a district council and a joint committee) commented on this clause.

- The district council asked that the regulations allow sufficient flexibility to allow councils to accumulate adequate reserves to achieve medium and long-term strategic objectives.
- It also asked for phased implementation of any regulations regarding reserves to cover the costs of transition to reformed local government.
- The joint committee welcomed the prudent financial approach in requiring councils to maintain a minimum level of reserves.

**Clause 7 makes provision for reserves specified in regulations under clause 6(1) to be designated controlled reserves, with a required minimum balance at the end of the financial year. The chief financial officer must report to council on the reasons for a controlled reserve not achieving the minimum level, and any action considered necessary to prevent a recurrence in the following year.**

13. Twelve respondents (seven district councils, a change manager, two joint committees, ALGFO and NILGA) commented on this clause.

- Ten respondents (five district councils, a change manager, two joint committees, ALGFO and NILGA) expressed concern that allowing the Department to specify any reserve a controlled reserve is not compatible with giving councils freedom to manage their own affairs.
- Another council asked for further clarification on what constitutes "controlled reserves".
- A further council asked the Department to issue guidance for consultation in regard to the maximum level of reserves that should be maintained as this is a matter which the local government auditor comments on when reviewing the annual accounts.

**Clause 9 gives a council power to establish additional funds, with the requirement that income arising from investment of the money in, or other application of, the fund should be carried to the fund.**

14. Nine respondents (four district councils, a change manager, two joint committees, ALGFO and NILGA) commented on this clause.



- One district council and one joint committee welcomed the removal of the current requirement for approval from the Department.
- Seven respondents (three district councils, a change manager, one joint committee, ALGFO and NILGA) expressed a view that these funds should not be subject to any departmental control nor treated as controlled reserves in accordance with Clause 7.

**Clause 11 allows a council to borrow money for any purpose relevant to its statutory functions or for the prudent management of its financial affairs.**

15. Seventeen respondents (eight district councils, a change manager, four joint committees, a government department, ALGFO, CAUS and NILGA) commented on this clause.

- Fourteen respondents (seven district councils, a change manager, three joint committees, ALGFO, CAUS and NILGA) welcomed the removal of the requirement for departmental approval, and the widening of the purpose for which money can be borrowed.
- Another district council welcomed the need to comply with the appropriate codes of practice.
- Two respondents (a district council and a joint committee) asked the Department to create a general power of expenditure for councils in relation to the discharge of their statutory functions.
- A district council recommended additional provision to confer a power on councils to enter into other methods of raising finance, such as local asset backed borrowing.
- A joint committee recommended that the Bill should state expressly that borrowing can be applied to both capital and revenue activities.
- A government department noted that an important element of the assurance process under the current arrangements for loan sanctions is provided by the Department of the Environment approving the loan. This respondent asked the Department for details of alternative measures proposed to provide the relevant assurance.

**Clause 13 introduces a duty for councils to determine an affordable borrowing limit.**

16. Twelve respondents (seven district councils, a change manager, two joint committees, ALGFO and NILGA) commented on this clause.

- Eight respondents (four district councils, a change manager, one joint committee, ALGFO and NILGA) noted that there is no requirement for the chief financial officer to report to the council on the review of the affordable borrowing limit. These respondents recommended that this should be included in subordinate legislation.
- Three respondents (two district councils and a joint committee) asked for clarification on how the affordable borrowing limit is to be determined.
- One district council noted that, regarding borrowing, compliance with the Prudential Code will introduce more detailed reporting on a council's financial standing, which will support increased transparency and improved information for all stakeholders.
- The same council agreed that it is best practice to commit to borrowings that a council can afford to repay, but expressed concern that it had limited control over the

consolidation of borrowing between two amalgamating councils, with the affordability of borrowing being reduced through the establishment of the new council with a reduced rates base. The council gave the view that this would result in borrowing that would be disproportionate to income generated, which might fall outside limits recommended in regulations.

### **Clause 14 enables the Department to impose borrowing limits in specific circumstances.**

17. Twelve respondents (seven district councils, a change manager, two joint committees, ALGFO and NILGA) commented on this clause.

- Ten respondents (five district councils, a change manager, two joint committees, ALGFO and NILGA) stated that the Department's power (outlined in Clause 14(2)) to set a limit on borrowing by a particular district council should be restricted to circumstances where that council has disregarded its duty or obligation under section 13.
- Two district councils stated that a definition of "national economic reasons" should be provided in the Bill or in the regulations made under this clause. The regulations should clearly outline the treatment of schemes that are already in progress or have been agreed.
- One district council noted that this clause was similar to legislation made in 2002 for Great Britain.

### **Clause 17 deals with credit arrangements entered into by councils.**

18. Eleven respondents (six district councils, a change manager, two joint committees, ALGFO and NILGA) commented on this clause.

- Nine respondents (four district councils, a change manager, two joint committees, ALGFO and NILGA) asked for clarification on whether long term liabilities associated with the closure and aftercare costs associated with landfill sites are to be treated as credit arrangements for inclusion when determining the affordable borrowing limit.
- Eight respondents (four district councils, a change manager, one joint committee, ALGFO and NILGA) recommended that trade creditors should be excluded from the definition of a credit arrangement as they are part of the working capital requirement and not long term debt.
- Ten respondents (six district councils, a change manager, one joint committee, ALGFO and NILGA) asked for clarification of the term prescribed liability.
- A district council thought that there was a gap regarding the Department's power to make regulations referred to in clause 17(2)(b).

**Clause 19 provides for expenditure of councils to be treated as capital expenditure in accordance with proper practices. The Department may make regulations to provide for expenditure not to be treated as capital expenditure, or may determine that expenditure of a particular council should be treated as being, or not being, capital expenditure.**

19. One respondent (CAUS) stated it supported the need to modernise, particularly regarding the capital finance system.

### **Clause 21 enables the Department to make regulations applying the provisions of Clause 20 (Capital receipts) to non-money receipts.**

20. One district council commented on this clause. It stated that greater clarification is required regarding the process by which non-money receipts are to be treated by councils. This respondent noted that greater clarification is to be provided in regulations.

### **Clause 22 enables the Department to make regulations about the use of capital receipts.**

21. Twelve respondents (seven district councils, a change manager, two joint committees, ALGFO and NILGA) commented on this clause.

- All of these respondents interpreted the clause as removing the current requirement (in section 59 of the 1972 Act) for capital receipts to be applied in the first instance against money borrowed for the purpose of acquiring that asset, and asked for the removal of the power outlined in clause 22 for the Department to control this area by regulation.
- One district council asked that it would be fully consulted on the drafting of any regulations made under this clause.

### **Clause 23 gives local councils the power to invest.**

22. Five respondents (two district councils, two joint committees and CAUS) commented on this clause.

- All of these respondents welcomed the introduction of the power to invest.
- One district council stated that the ability to invest in capital expenditure should not be restricted to resource-rich authorities and that the Department may wish to consider interim arrangements to allow for the transition to the eleven council model.

### **Clause 24 makes provision for security for money borrowed by a council, and for the appointment of a receiver in the event of default.**

23. Two respondents (PwC and a ratepayer) commented on this clause.

- PwC commented that this clause should not be construed or interpreted as preventing a district council from making its assets available so that it can participate in Local Asset Backed Vehicles or other Special Purpose Vehicles which allow its assets to be joint-ventured (within reason) for regeneration purposes or for earning income.
- A ratepayer asked for paragraphs (5) to (8) of clause 24 to be removed from the Bill as a power to appoint a receiver because of a council debt is not matched by a specific power for councils to apply for the appointment of a receiver in connection with uncollected rates. This respondent went on to state that the costs of amalgamation and consolidation of liabilities could cause a council to owe well over £10,000 to its creditors, resulting in a receiver being sent in by the High Court.

## **Part 2 – Grants to Councils**

**Clause 26 provides for the Department to make a de-rating grant to councils for each financial year.**

24. Two respondents (a district council and a joint committee) commented on this clause. Both welcomed the clarification provided by replacing the two elements of the general grant currently payable to councils with two separate grants.

**Clause 27 makes provision for the Department to make a rates support grant to district councils for each financial year.**

25. Fifteen respondents (eight district councils, a change manager, three joint committees, one political party, ALGFO and NILGA) commented on this clause.

- Eleven respondents (seven district councils, one change manager, two joint committees and ALGFO) asked for a review of the statutory formula currently used to calculate the resources element before it is applied to the rates support grant, especially for the new district councils taking on additional functions.
- Three respondents (two district councils and one joint committee) stressed the importance of having a formula that will ensure that the rates support grant will be allocated to those councils that need the highest levels of financial assistance. One of those councils and the joint committee asked that Targeting Social Need measures should be applied to any review of the statutory formula for the rates support grant.
- One district council expressed concern that, although supportive of the intention to bring the financial regime for local government in Northern Ireland in line with Great Britain, the majority of council funding in Northern Ireland is derived from the district rate collected by an external agency that is not accountable to local government. The council would like to see controls introduced to ensure councils are not affected adversely by the actions of agencies which are outside their control.
- NILGA asked for further modelling to be undertaken to indicate the impact on councils of the redefined boundaries, and the implications for the rates support grant.
- Two respondents (a district council and a joint committee) stated the merging of two councils with the lowest rates income and highest levels of deprivation will lead to a major equality issue if the levels of rate support grant do not change. They stated that additional resources from central government would be needed to achieve equalisation among councils, asking for the inclusion of provision to allow for payment of an additional grant to councils that will suffer financial disadvantage due to the merger.
- Two respondents (a district council and a joint committee) asked for provision in the Bill to provide for some transitional relief in the first four years of the new council, to allow for an adjustment period before ratepayers are required to pay the significantly higher rates.
- One political party demanded that all the costs of the RPA be met by central government rather than local rate payers.
- Eight respondents (four district councils, one change manager, one joint committee, ALGFO and NILGA) expressed alarm that the provision in paragraph (6) stated that the amount payable as the rates support grant could be calculated as nil.

**Clause 28 permits the Department to reduce the amount of the de-rating and rates supports grants payable to councils in specified circumstances.**

26. Three respondents (a district council, a joint committee and NIPSA) commented on this clause.

- The district council recognised that this clause is a continuation of provisions set out within the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002, but suggested that any sanctions in circumstances whereby local government failed to achieve or maintain a reasonable standard of economy, efficiency and effectiveness in the discharge of its functions, should be applied as a last resort, giving consideration to the likely effect of any such sanctions upon the administration of local government. Further clarity was sought on how such sanctions would be introduced and the role of the local government auditor.
- The joint committee asked for rigorous scrutiny of the intentions behind these new powers.
- NIPSA requested absolute assurance that, as the largest local government trade union, it would be consulted before the Department uses its powers to defray expenditure and deduct costs in relation to specified bodies from the de-rating or rates support grants.

### **Clause 29 will enable any department to make payments of grants to local government in relation to their functions.**

27. Thirteen respondents (seven district councils, a change manager, three joint committees, ALGFO and NILGA) commented on this clause. All of these respondents welcomed the provision that any Northern Ireland Department and not just the Department of the Environment will have the power to issue grants to councils. This is a more effective process as the department which makes the grant will now have direct control over that grant.

## **Part 3 – Payments to Councillors**

28. Twelve respondents (seven district councils, one change manager, two joint committees, ALGFO and NILGA) made a general comment on this Part of the Bill, welcoming the consolidation of all of the provisions dealing with payments to councillors into one Act.

### **Clause 30 will give the Department power to make regulations concerning the payment of allowances and other payments to councillors by councils. Regulations may also require councils to publish a scheme of allowances.**

29. Fifteen respondents (eight district councils, a change manager, three joint committees, one ratepayer, ALGFO and NILGA) commented on this clause.

- Ten respondents (six district councils, two joint committees, ALGFO and NILGA) stated that they had no objection to the requirement to publish a payment scheme by a prescribed date, as this information can already be accessed through publication schemes.
- Six respondents (two district councils, a change manager, a joint committee, ALGFO and NILGA) recommended that, in terms of proper accountability for public funds, all expenses should be supported by appropriate evidence of expenditure incurred in accordance with Her Majesty's Revenue and Customs (HRMC) requirements.
- One district council supported the introduction of independent assessors to recommend levels of remuneration, and asked that such recommendations should be flexible enough

to make payments to councillors to undertake duties as the council requires. It also asked if the costs associated with the establishment of the panel would outweigh the benefits of changing from current practice.

- One district council noted that, in this Part of the Bill, any reference to a council includes reference to a joint committee of two or more councils. It recommended that such a clause should be generic to the Bill and suggested that provision should be made (similar to Schedule 7 to the 1972 Act) to expressly state the provisions which would apply to joint committees.
- A ratepayer stated that paragraph (6) will require ratepayers to pay the costs of voluntary and statutory transition committees which councils have been forced to establish as a consequence of a Boundaries Bill which was rushed through the Assembly by accelerated passage without giving the councils or ratepayers any say in the matter. This respondent also stated that a Finance Bill which forces the ratepayers to pay the costs for transition committees which has not been included in the rates estimates or budgeted for should not be allowed by the auditor and should be removed. In addition this respondent stated that the sentence 'In this section any reference to a council includes a reference to a joint committee' should be removed as it is misleading, inaccurate, and confers power on a 'joint committee' which it is not entitled to.

**Clause 33 allows councils to make payments towards expenditure reasonably incurred by a councillor in attending a conference or meeting on matters relating to the interest of the district or any part of it, and the inhabitants of the district or any part of it.**

30. Fourteen respondents (eight district councils, a change manager, three joint committees, ALGFO and NILGA) commented on this clause.

- Thirteen of these respondents (eight district councils, a change manager, two joint committees, ALGFO and NILGA) welcomed this clause, which would allow for attendance by councillors at events which, although not directly related to the functions of a council, deal with matters that are of interest to the district.
- One district council asked for the inclusion of a further criterion, pertaining to the advancement of the affairs of local government. A joint committee commented in a similar vein to the effect that it would be sufficient for expenses incurred in attending conferences and meetings relevant to the administration of local government, rather than testing if the expenditure was in the interest of the district.
- Two respondents (a district council and a joint committee) asked for regulations to stipulate a requirement for each council to assess each event against its relevance to the interests of the district or the inhabitants of that district, and to also assess value for money to ensure appropriate and relevant use of council funds.
- Two respondents (a district council and a joint committee), while noting Clause 35, expressed a view that it would be clearer to make specific provision for payment towards expenditure incurred by an officer of a council in Clause 33.

**Clause 34 gives the Department power to make regulations for the establishment of an independent panel to advise the Department on payments to councillors.**

31. Fourteen respondents (seven district councils, a change manager, three joint committees, CAUS, ALGFO and NILGA) commented on this clause.

- All of these respondents welcomed the proposal to make regulations establishing a panel to advise the Department on payments to councillors, as such a panel will provide a common framework of allowances for all councillors in Northern Ireland.
- NILGA welcomed the commitment from the Department to implement outstanding recommendations from the Councillors' Remuneration Working Group report of 2006.
- One district council stated that members of the panel should be appointed using the public appointments process, and drew attention to the importance of appropriate expertise and knowledge of the roles and responsibilities of elected members and familiarity with remuneration issues for councillors as criteria for selection.
- One district council asked the Department to consider making specific provision in the draft Bill for an allowance scheme for joint committees.

**Clause 35 provides that, for the purposes of this Part of the Bill, "councillor" includes a member of a committee or sub-committee of a council, whether a member of the council or not, and that expenses payable under Clause 33(1) shall also be payable to officers.**

32. One respondent (a ratepayer) commented on this clause recommending the removal of the provision that includes an officer of the council in the definition of the term "councillor" on the basis that it equates paid members of staff already receiving a salary with elected representatives entitled to extra remuneration.

## **Part 4 – Miscellaneous powers to make payments**

33. Ten respondents (six district councils, a change manager, a joint committee, ALGFO and NILGA) welcomed the consolidation of provisions relating to payments by councils into one piece of legislation.

**Clause 36 allows a district council to make payments for any purpose which in its opinion are in the interests of, and will bring direct benefit to, the council, its district or any part of its district, or the inhabitants of the district or any part of its district.**

34. Eleven respondents (six district councils, a change manager, two joint committees, ALGFO and NILGA) queried the need for this provision, given the proposals to introduce a general power of well-being.

**Clause 37 requires payments under section 36 to be commensurate with the direct benefit accruing to its district or any part of its district or to the inhabitants of its district or any part of its district.**

35. Nine respondents (four district councils, a change manager, two joint committees, ALGFO and NILGA) commented on this clause.

- Seven of these respondents (three district councils, a change manager, one joint committee, ALGFO and NILGA) recommended an amendment to the wording of paragraph 1, so that it would now read "... shall not make payments under Section 36 unless, in its opinion, the direct benefit accruing...".

- A district council and a joint committee asked for guidance to ensure that a standardised assessment would be used by all councils when assessing whether the direct benefit accruing is commensurate with the payments to be made.

**Clause 38 allows a council to make payments to a fund raised in connection with a particular event directly affecting persons resident in the United Kingdom under specified circumstances.**

36. Eight respondents, (four district councils, one change manager, one joint committee, ALGFO and NILGA) asked for the provision to be extended to apply to circumstances or causes in general rather than being restricted to a particular event.

**Clause 39 places restriction on the cumulative amounts payable under provision of clauses 36 and 38.**

37. Eleven respondents (six district councils, one change manager, two joint committees, ALGFO and NILGA) queried the need for this restriction in the light of proposals to introduce a general power of well-being for district councils.

**Clause 40 allows a council to pay reasonable subscriptions to specified classes of associations or voluntary bodies.**

38. A district council suggested that this should include where a council considers it necessary or desirable for an officer to hold membership of a professional body in connection with that officer's discharge of duties.

## **Part 5 – Supplementary**

**Clause 42 states that regulations made under any provision of the Bill, with the exception of regulations under section 27, shall be subject to negative resolution. (Regulations under section 27 deal with the calculation of the rates support grant)**

39. A political party commented on this clause. It supported this clause on the grounds that it establishes democratic control over some local government finance by determining that regulations on the calculation of the rates support grant will not come into operation unless approved by a resolution of the Assembly.

**Clause 43 places a requirement on the Department to consult with**

- councils;
- such associations representative of councils;
- such associations representative of officers of councils; and
- such other persons or bodies it considers appropriate before making any regulations or Orders, or issuing any guidance, under the provisions of the Act.

40. Three respondents (a district council, a joint committee and NIPSA) commented on this clause.



- Two respondents (the district council and the joint committee) asked for assurance, or an express provision, for the Department to consult with joint committees.
- NIPSA requested absolute assurance that it would be included as a specified consultee.

## **Clause 46 provides that the title of the proposed Act will be the Local Government Finance Act (Northern Ireland) 2009.**

41. One respondent (a district council) expressed a view that, as Part 3 deals with payments to councillors and other expenditure issues, the Bill should bear the title "Finance and Expenditure Bill".

## **Other comments – not linked to specific clauses**

42. A number of comments of a general nature were made, not linked to specific provisions of the Bill.

43. Although there was general support for the Bill and the steps taken to modernise the legislative framework for local government finance, one political party disputed the reality of this, given the financial pressures on councils arising through the proposed introduction of three quangos- a Single Waste Authority, a Business Services Organisation and a Municipal Bank.

44. Two respondents (a district council and a joint committee) asked why the draft Bill had been screened out for an equality impact assessment, particularly with regard to the equity of the rates support grant, which is of major importance.

45. NIPSA questioned the timing of the consultation following the Minister's announcement on 20 October 2009 in respect of the Phase II PwC Report – "Assessment of Options for Local Government Service Delivery". NIPSA expressed the view that there has been limited opportunity to examine the content of the Report to consider what, if any specific implications may arise that interface with the draft Local Government (Finance) Bill.

46. NIPSA also expressed concern over the issue of loans from the Department of Finance and Personnel for the implementation of the local government aspects of the Review of Public Administration. NIPSA was concerned that this would impact severely on future staffing levels and provide for unfair differential treatment between local government and other RPA sectors, specifically regarding the funding of a voluntary early severance scheme.

47. A joint committee took the view that the proposed updating of legislation for local government finance was timely, given the financial implications of the Review of Public Administration. It recommended that the Department take the opportunity to specify the provisions that would apply to joint committees, similar to Schedule 7 to the 1972 Act.

48. One district council noted that the Bill does not extend, in general terms, to joint committees, and requested a provision to extend the provisions of the Bill, insofar as they are relevant, to joint committees.

49. Eleven respondents (five district councils, a change manager, three joint committees, ALGFO and NILGA) expressed concern that the Bill does not make provision to support new initiatives and models for service delivery, such as introducing powers for councils to participate in public private partnerships or public finance initiatives.

50. Nine respondents (four district councils, a change manager, two joint committees, ALGFO and NILGA) noted that the Draft Finance Bill does not provide for the signing off of the accounts of the existing twenty-six district councils for 2010-11.

51. Two respondents (a district council and a joint committee) asked for clarification on whether section 59 of the 1972 Act was to be repealed.

52. Eight respondents (four district councils, a change manager, a joint committee, ALGFO and NILGA) asked for the repeal of section 96(5)(a) of the 1972 Act, which currently requires all disposals of land for less than best price to be approved by the Department, and replace it with a power enabling the Department to specify in regulations the purpose and limitations applicable to such disposals. NILGA expressed the view that the current role of the Department was not compatible with the proposed introduction of the power of well-being, but also stated any such regulations should include safeguards and scrutiny mechanisms to prevent any possible malpractice.

53. Seven respondents (three district councils, a change manager, a joint committee, ALGFO and NILGA) asked for the limit specified in section 100 of the 1972 Act (which currently permits a council to make contracts up to £30,000 in value without use of the common seal of the council) to be updated. They recommended that the Department should have the power to amend the limit by regulation.

54. Three respondents (a joint committee, a political party and NILGA) recommended that the Bill should make provision for the inclusion of social clauses in public procurements.

55. CAUS stated it would welcome a framework to support regional or co-operative approaches, for example, taking advantage of shared services or avoiding duplication of resources in neighbouring areas.

56. A joint committee indicated that the full implications for joint committees of the Review of Public Administration would not be known before the closing date for responding to this consultation exercise. It asked for the inclusion of provisions in the Bill that would allow for flexibility as more RPA-based financial issues emerge.

57. PwC asked, in the event of any delays to the legislation for the local government aspects of RPA, for consideration to be given to introducing the power of well-being in the Finance Bill. In addition, PwC recommended that consideration be given to developing the power of well-being along the lines of the "power of competence in relation to functions" that operates in some countries in Europe.

58. A joint committee stated that, in order to deliver better value to the public purse, councils and joint committees should be able to make capital contributions to capital projects to minimise long term costs, particularly the cost of finance charged. It clarified this by adding that the ability of local government to borrow at more competitive rates, and often for longer periods, than the private sector could result in more cost effective solutions for the public sector, particularly in the case of large scale capital projects which often create long term financial liabilities for councils.

59. Four respondents (two district councils, a joint committee and CAUS) noted that the detail of the new financial framework will be provided in regulations, and sought clarification over the content, resource implications, timing and procedure for regulations.

60. NIPSA outlined trade union interest in the issue of councillors' remuneration, given potential issues over pay levels for council employees vis-à-vis those for councillors.

61. NIPSA reserved the right to make further representations to all appropriate parties as the Bill progresses through the legislative process.

62. One district council requested that monitoring of councils under of the new statutory financial framework should be "light touch" and incorporated into the existing audit cycles.

## **Departmental Briefing on Delegated Powers**

Mrs Alex McGarel Clerk to the Environment Committee Northern Ireland Assembly Parliament Buildings Stormont Belfast BT4 3XX	Central Management Branch 10-18 Clarence Court BELFAST BT2 8GB  Telephone: 028 90 5 40855 Facsimile: 028 90 5 41169 Email: una.downey@doeni.gov.uk Your reference: Our reference: CQ/38/10
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Date: June 2010

Dear Alex

### **Local Government (Finance) Bill – Environment Committee Meeting Dated 10 June 2010**

You will be aware that officials have been invited to attend the Environment Committee meeting on 10 June 2010 to brief members on the Local Government (Finance) Bill.

I have attached a Delegated Powers Memorandum regarding powers in the Bill which will enable the Department to make subordinate legislation.

Marie Cochrane, Dickson Holliday, Brenda Mooney and Janet Cooper will attend the meeting.

Yours sincerely,

Úna Downey  
DALO

## **Local Government (Finance) Bill**

### **Delegated Powers Memorandum**

#### **Purpose**

1) The Bill will:

a) remove the requirements for councils to gain departmental approval for borrowings and the application of their funds or any proceeds from the sale of capital assets;

- b) introduce certain new powers, including the power to invest;
- c) introduce a prudential regime for capital finance;
- d) clarify the nature of the general grant by replacing the two elements of the grant (the resources element and the de-rating element) with two separate grants – a rates support grant and a de-rating grant;
- e) extend to all departments the general power which allows the Department of the Environment to pay grants to councils;
- f) require councils to make and publish a scheme of allowances to councillors; and
- g) enable the Department to establish an independent remuneration panel to advise the Minister of the Environment on councillors' allowances.

## **Delegation of Powers**

2) The following provisions in the Bill contain delegated powers to enable the Department to make subordinate legislation:

- a) Part 1, clause 2(1)

Clause 2(1) provides that the Department may make regulations about the accounting practices to be followed by a council, in particular with respect to the charging of expenditure to the general fund. The regulations will provide the detail of the accounting framework to be followed by councils and will refer to specific accounting codes of practice. The regulations will also require each council to make provision for a minimum amount it considers prudent for the financing of capital expenditure.

The above power has been left to subordinate legislation as accounting practices are technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

- b) Part 1, clause 6(1)

Clause 6(1) provides that regulations may make provision requiring a council to maintain financial reserves. This may also apply to "controlled reserves" specified in Clause 7(1). It is not the Department's intention to make regulations at this stage.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power are subject to negative resolution.

- c) Part 1, clauses 13(2), (3), and (4)

Clause 13(1) imposes a broad duty on councils to determine and keep under review the amount they can afford to borrow. The powers contained in Clauses 13(2), and (3) will enable the Department to make regulations with specific regard to the performance of that duty, when, how, and the period for which such a determination is to be made. Regulations may also make

provision for the monitoring of the borrowing limit. The power contained in Clause 13(4) will enable the Department to identify one or more codes of practice to which councils must pay regard when making a determination.

In the regulations, the Department intends to refer councils to the "Prudential Code for Capital Finance in Local Authorities" published by CIPFA - an accounting code of practice which provides the framework to support councils' decisions in relation to all aspects of capital finance.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under these powers will be subject to negative resolution.

d) Part 1, clause 14(1) and (4)

Clause 14(1) enables the Department with the consent of the Department of Finance and Personnel to set limits in relation to council borrowing for national economic reasons.

The Department would only impose a limit for national economic reasons during a time of national economic crisis, if councils' total borrowing, albeit locally prudent, was increasing to a level which threatened the country's economy.

Clause 14(4) provides that regulations may make provision about the circumstances in which, under such a limit imposed, a council is to be regarded as having headroom which it may transfer to another council and the amount of headroom which it has for those purposes.

The above powers have been left to subordinate legislation as they are intended for use in extreme circumstances only where it would not be effective, timely or practicable to make new primary legislation.

Regulations made under these powers will be subject to negative resolution. An additional level of control lies in the requirement for consent from the Department of Finance and Personnel.

e) Part 1, clauses 17(2)(b)

Regulations made under Clause 17(2)(b) will exempt various types of long-term liability, which have nothing to do with capital expenditure, from credit arrangements. .

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulation made under this power will be subject to negative resolution.

f) Part 1, clause 18(3)

Regulations made under Clause 18(3) set out how the cost of credit arrangements are to be calculated.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

g) Part 1, clause 19(2)

Clause 19(2) gives the Department power in regulations to include, or exclude, types of expenditure to be treated as capital expenditure by councils.

Examples of expenditure which will be treated as capital expenditure include:

- expenditure incurred on the acquisition or preparation of a computer programme, including the right to use the programme for at least one year;
- giving a loan, grant or other financial assistance to any person for use towards expenditure which would, if incurred by the council, be capital expenditure;
- the repayment of any grant or financial assistance given to the council for the purposes of capital expenditure.

Examples of expenditure which will not be treated as capital expenditure include expenditure incurred by the council in relation to loans, grants or other financial assistance (eg car loans, relocation expenses) to an officer in accordance with the terms and conditions of his employment; or in connection with the appointment of an officer to the council.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

h) Part 1, clause 20(3)

Clause 20(3) gives the Department the power to make regulations about capital receipts. Capital receipts are normally the proceeds of property sales. The Department intends to make regulations which will vary the definition of a capital receipt in that sums which would otherwise be capital receipts are not to be so treated if they do not exceed a certain amount. Also, income from some operating and finance leases would not be treated as a capital receipt.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

i) Part 1, clause 21(1)

Clause 21(1) makes provision for regulations about the treatment of non-monetary receipts. The regulations may apply section 20 (capital receipts) to cases where a council makes a disposal but is paid by way of some other property, service or benefit, or if a council receives payment other than money

The Department does not propose to make regulations about non-monetary receipts at this time.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

j) Part 1, clause 22(1)

Clause 22(1) makes provision for regulations to be made about the use of capital receipts. These regulations will allow councils to use capital receipts to pay for any kind of capital expenditure or, if the council prefers, as provision to repay debt. Receipts may also be used to meet premiums on early debt repayment or liabilities under credit arrangements.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

k) Part 1, clause 24(9)

Clause 24(8) specifies that no application for the appointment of a receiver may be made unless the sum due is not less than £10,000. Clause 24(9) enables the Department to make an order to substitute a different sum for the one specified in clause 24(8).

The Department has no immediate plans to exercise this power.

The above "Henry VIII" power has been created to allow for the amount to be updated without the need for primary legislation.

An order made under this power will be subject to negative resolution.

l) Part 2, clause 27(5)

Clause 27 enables the Department to make regulations about the rates support grant (currently known as the resources element of general grant). The Local Government (General Grant) Regulations (Northern Ireland) 2003, as amended, make provision about the calculation of the resources element of general grant.

The regulations to be made under clause 27(5) will replicate the provisions of the 2003 Regulations – the only change will be to the name of the grant – and will provide for:

- the amount to be calculated by reference to a formula;
- the manner and time at which the calculation is to be made;
- determining the person by or to whom any information required for the purpose of that calculation is to be given; and
- the time at which and form in which the information is to be given.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to draft affirmative resolution.

m) Part 2, clause 28(2)

Clause 28(2) provides that the Department may, by order, reduce the amount payable to a council by way of the de-rating grant or rates support grant for a financial year. This arises only in cases where a council has failed to achieve or maintain a reasonable standard of economy, efficiency and effectiveness in the discharge of its functions, or a council's expenditure has been excessive having regard to the council's financial resources.

The power under Clause 28(2) replicates the power in Article 6 of the Local Government (Miscellaneous Provisions) Order (Northern Ireland) 2002 which made similar provisions in respect of the general grant.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

An order to be made under this power will be subject to draft affirmative resolution.

n) Part 2, Clause 28(6)

Clause 28(6) allows the Department to defray any expenditure incurred in any financial year in the provision of services for a council by a body specified in regulations.

The Department intends to exercise the power in clause 28(6) by replicating the provisions currently contained in the General Grant (Specified Bodies) Regulations (Northern Ireland) 2007.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

o) Part 3 clause 31(1),(2), (3) and (4)

Clause 31(1) provides that the Department may make regulations about the payment of allowances to councillors. The regulations will set out the types of allowances that may be paid to councillors, for example, basic allowance, special responsibility allowance, dependants' carers' allowance. Clause 31(2) provides that the Department may determine the maximum amount or rates of allowances paid to councillors by councils. Clause 31(1) and (2) re-enact section 36 of the Local Government Act (Northern Ireland) 1972.

Clause 31(3) provides that the Department may make regulations to require a council to make a scheme of allowances, setting out the amount or rates of the allowances it has decided to pay to councillors at the start of each year and also the payments made during a year to each councillor. Clause 31(4) enables the Department to require a council to make its scheme of allowances by a set date and to publish it in accordance with the ways set out in the regulations – e.g. by publishing the scheme on the council website.

The above powers have been left to subordinate legislation as they are technical in nature and may change from time to time.

Regulations made under these powers will be subject to negative resolution.

p) Part 3, clause 35

Clause 35(1) provides that the Department may make regulations to establish a panel to advise the Department on payments to councillors. The panel would comprise a chairman and 2 to 4 members to consider the system and levels of councillors' allowances as directed by the Minister of the Environment. The panel would be appointed by the public appointments process and, in the interests of impartiality, no serving councillor would be able to be a member. The panel will only meet for the time required to provide their advice on those aspects of councillors' allowances the Minister has asked them to consider. Clause 35(2) and (3) identifies matters that



may be included in the regulations made under clause 31(1). The Department will provide the secretariat to the panel and arrange for the panel to have access to premises for their meetings.

The Department intends to make regulations under this clause which will come into operation at the same time as the Bill.

The above power has been left to subordinate legislation as it is technical in nature and may change from time to time.

Regulations made under this power will be subject to negative resolution.

q) Part 4, Clause 40(2)

Clause 40(1) makes provision about the total payments which may be made under Clauses 37 and 39 (Payments for special purposes and Public appeals) and makes reference to specific amounts.

Clause 40(2) allows the Department, by order, to substitute a different amount for any amount specified in clause 40(1).

This "Henry VIII" power has been brought forward, without amendment, from section 115(2A) of the Local Government Act (Northern Ireland) 1972. This power has been left to subordinate legislation to allow for changes to the amounts specified in clause 40(1) without the need for primary legislation.

An order cannot be made under this power unless laid in draft and approved by a resolution of the Assembly.

Local Government Policy Division  
Department of the Environment

## **Local Government Auditor Views on Controlled Reserves**



**John Buchanan**  
Chief Local Government  
Auditor

## Northern Ireland Audit Office

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**30 September 2010**

**Mr Cathal Boylan**  
Chairperson  
Committee for the Environment  
Environment Committee Office  
Room 245  
Parliament Buildings  
Ballymiscaw  
Stormont  
BT4 3XX

**Dear Mr Boylan**

Thank you for your letter dated 23 September 2010.

The Department has tended over the year to look to financial and audit developments in England to assist in its review and updating of legislation in Northern Ireland. In England councils have the freedom to establish such funds as it is consider appropriate whereas our Local Government Act (Northern Ireland) 1972 provided only for the creation of a Capital Fund or a Renewal and Repairs Fund. Both of these facilities have been used by councils in setting aside funds to address anticipated future issues.

The Finance Bill at Clause 9 proposes to allow councils the freedom to establish such reserves as it considers necessary and will give councils greater freedom in addressing future funding issues. If managed appropriately I would not imagine any audit issues in this regard.

As I understand the background to the introduction of Controlled reserves legislation in England stemmed from a concern that a council's general fund reserve could be run down so low as to leave it difficult to manage unexpected events - prudence would suggest that a council should carry a reasonable level of reserve in its working account. Having Clause 7 in our legislation would allow for the Department to introduce controls if this was considered necessary at any future date.

While this Finance Bill has been developing we did reach a stage in discussions in the RPA Finance and Estates Working Group that it was felt it would be appropriate for some guidance to go to councils with regard to the level of general reserve (District Fund Balance) that would be appropriate as councils moved towards May 2011. This resulted in the Department's letter to councils dated 9 December 2009 titled "Guidance on Financing of Council Expenditure" and the 5 to 7.5% mentioned in your letter.

*Office of the Comptroller and Auditor General for Northern Ireland  
Telephone (028) 9025 1100 GTN 440*

In my report "The exercise by local government auditors of their functions – in the year to 31 March 2010" published on 23 June 2010 I have included a table (Table 2 on page 8) which shows council District Fund balances as a percentage of Net Operating Expenditure ranged from 2.2% to 28.5% with an average of 10.3% in respect of balances at 31 March 2009. Four councils had below the 5%.

I have looked at the figures from council accounts submitted for audit for the year to 31 March 2010 and average is 10.6% with the range from 4.0% to 33.5%.

Another view might ask the question – could balances held be too high?

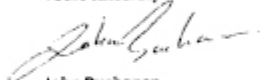
At 31 March 2009 17 councils had a District Fund balance of over 10% of which 4 were over 20%. While there may individually be good reasons for this it could pose the question as to whether rate income from ratepayers has been sought in advance of need.

The Department's letter dated 9 December 2009 would have been first available for consideration as part of the 2010-11 rate setting year. Accordingly it seems to me to be reasonable for the Department to take the powers proposed by Clause 7 but to wait say the outcome of the councils' financial year to 31 March 2011 before taking a view as to whether regulations under Clause 6 would be appropriate.

As I understand it the Department's letter of 9 December 2009 has been positively received in councils and if this non-statutory guidance proves effective regulation may not be required.

I hope that these comments may be of assistance to the Committee.

Yours sincerely



John Buchanan  
Chief Local Government Auditor

## Letter to Department re Chief Executive Officers and Chief Finance Officers

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Ref ENV263

Ms Úna Downey  
Assembly Liaison Officer  
Central Management Branch  
4th Floor, Clarence Court  
Adelaide Street  
Belfast BT2 8GB

6 October 2010

Dear Úna

## **Local Government (Finance) Bill**

With respect to Clause 1 of the Local Government (Finance) Bill, the Committee for the Environment has taken evidence from a number of district councils and organisations who advocate that the roles of chief executive officer and chief finance officer should be separated in the interests of good governance.

The Committee has noted that in the June 2010 report from the Chief Local Government Auditor, comments were made by the Auditor on the fact that in some cases, expenditure on the Chief Executive's and Director's corporate credit cards are being authorised by the respective claimant themselves. Expenditure over £1,000 is approved appropriately by the senior management team but bills below £1,000 were authorised by the user, thereby presenting a risk that unauthorised or unregulated expenditure will not be identified in the absence of appropriate authorisation.

The Committee has concerns that such a situation can give rise to potential for misuse of public funds.

I would be grateful if the Department of the Environment can provide further details on the extent to which this practice happens across the network of district councils.

The Committee would also ask whether, given the potential for misuse of funds, the Department would consider that having a separate office of chief financial officer in a council would reduce or eradicate such practices.

I would be helpful if a response on these issues could be provided at the planned Departmental presentation at the Committee meeting of 14 October 2010.

Yours sincerely

Alex McGarel  
Clerk to the Committee for the Environment

## **Departmental Response to Consultation on Local Government Finance Bill**

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings

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BELFAST  
BT2 8GB

Telephone: 028 90 5 40855  
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Email: una.downey@doeni.gov.uk  
Your reference:  
Our reference:

Date: 3 March 2010

Dear Alex

## **Draft Local Government (Finance) Bill – Departmental Response to Comments Raised During Consultation**

On 27 November 2009, a synopsis of the comments received during consultation on the draft Local Government (Finance) Bill was sent to the Committee. A copy of the Departmental response to the comments made by respondents is attached for your information at Annex A.

The Department intends to make the following amendments to the Bill prior to its introduction to the Assembly:

- to add a provision to clarify that councils may pay an officer's membership of a professional body if it is considered necessary for, or beneficial to, carrying out the duties of their job (It is proposed that this should be limited to one membership per officer, as it is possible in some cases to be eligible for membership of several professional bodies);
- to make minor amendments to clauses 12, 15 and 18 and the Schedule of Repeals as follows:
  - removing the words "or for" from paragraph (1)(a) of clause 12 (Control of borrowing);
  - removing the words "or for" from subsection (1) of clause 15 (Temporary borrowing);
  - removing the words "or for" from paragraph (1)(a) of clause 18 (Control of credit arrangements); and
- in the Schedule of Repeals, with regard to Schedule 7 to the Local Government Act (Northern Ireland) 1972, replacing the words "the entry relating to section 36" with the words "the entries relating to section 36 and section 115".
- to add a schedule of consequential amendments which will deal with references in other legislation to the sections of the Local Government Act (Northern Ireland) 1972 which are being repealed and replaced by this Bill.

I trust this information is of assistance. Should you require anything further, please contact me directly.

Yours sincerely,

## **Consultation on the Draft Local Government (Finance) Bill Departmental Response**

**March 2010**

### **Consultation On The Draft Local Government (Finance) Bill**

#### **Departmental Response**

##### **General**

1. The Department of the Environment issued a consultation document on the draft Local Government (Finance) Bill on 24 July 2009, seeking comments by 31 October 2009. The aim of the Bill is to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland.
2. The Department received a total of 28 responses to the consultation.
3. 64% (18) of all respondents welcomed the Bill and the Department's proposals to modernise the current legislative framework relating to local government finance and councillors' remuneration. No respondents opposed the overall purpose of the Bill.
4. 79% (22) of all respondents submitted comments on specific provisions in the Bill, as well as making comments of a general nature.
5. This document provides a summary of the issues raised by respondents and sets out the Department's response.

##### **Part I – Financial Administration**

###### **6. Clause 1(2) requires a council to designate an officer of the council as its chief financial officer**

###### **Comment**

Seven respondents stated that the roles of chief executive and chief financial officer should be separated.

One respondent stated that further clarification was needed on the role of the chief financial officer in order to ensure that the duty was delegated to the appropriate officer, and that the chief executive should retain the role of chief financial officer.

###### **Departmental response**

In considering the staffing structures of the eleven new councils, the Policy Development Panel on governance and relationships agreed that the role of chief executive and chief financial officer should be separated in the new councils. The Department proposes to take this forward in the forthcoming Local Government (Reorganisation) Bill.

## **Comment**

Eight respondents stated that the Department would need to make regulations prescribing the qualifications required for a chief financial officer.

## **Departmental response**

Section 41(3) of the Local Government Act (Northern Ireland) 1972 provides the Department with the necessary power to specify, by determination, the qualifications required for a chief financial officer.

**7. Clause 2 allows the Department to make regulations or issue guidance concerning the accounting practices to be followed by a district council, any committee of a council for which separate accounts are kept, or a joint committee of two or more councils.**

## **Comment**

Fourteen respondents commented that they were content that in principle the proposed legislation will give district councils greater freedom to manage their own financial affairs without having to obtain consent from the Department, but were concerned such freedom could be constrained through the use of central government regulations.

## **Departmental response**

The Department will consult on any subordinate legislation to be made, or guidance to be issued, under the provisions of the Bill.

## **Comment**

One respondent stated that it would welcome the opportunity to engage closely with the Department in drafting the regulations under this Bill to ensure that they reflect the needs of local government in Northern Ireland and provide for the provision of a modern and responsive public service by district councils.

## **Departmental response**

The Department will continue to work with councils through bodies such as the Association of Local Government Finance Officers (ALGFO) when developing the provisions to be taken forward in the regulations.

**8. Clause 4(1) requires the chief financial officer to report to the council on the robustness of the estimates of income and expenditure for the coming year submitted to it under clause 3.**

## Comment

Fourteen respondents asked for clarification of the concept of robustness, recommending that the Department should issue guidance on the exact issues to be considered by the chief financial officer in order to determine whether estimated figures are robust.

## Departmental response

Guidance on the issues to be considered is given in the Prudential Code for Capital Finance in Local Authorities ("the Prudential Code") issued by the Chartered Institute of Public Finance and Accountancy ("CIPFA"). It provides clarification on the prudential indicators to be taken into consideration when preparing estimates. Consideration of these indicators will assist chief financial officers and councils to reach a decision concerning the robustness of the estimates of income and expenditure.

## **9. Clause 6 enables the Department to make regulations requiring councils to maintain financial reserves.**

### Comment

One respondent asked that the regulations should provide sufficient flexibility to allow councils to accumulate adequate reserves to achieve medium and long-term strategic objectives.

### Departmental response

The Prudential Code requires councils to consider revenue forecasts and capital expenditure plans on a continuous basis for a rolling three-year period. The Department will consult on any regulations for reserves before they are made.

### Comment

One respondent asked for phased implementation of any regulations regarding reserves to cover the costs of transition to reformed local government.

### Departmental response

Provision for financial reserves will not be introduced prior to the financial year 2011-12.

## **10. Clause 7 makes provision for reserves specified in regulations under clause 6(1) to be designated controlled reserves, with a required minimum balance at the end of the financial year. The chief financial officer must report to the council on the reasons for a controlled reserve not achieving the minimum level, and any action considered necessary to prevent a recurrence in the following year.**

### Comment

Eleven respondents expressed concern that allowing the Department to specify any reserve a controlled reserve is not compatible with giving councils freedom to manage their own affairs.



## **Departmental response**

It is considered good practice to maintain minimum levels of reserves. The Department will make provision for this in regulations, which will be consulted on under clause 43 of the Bill.

## **Comment**

One respondent asked for further clarification on what constitutes "controlled reserves".

## **Departmental response**

Clarification will be provided in regulations which will be consulted on.

## **Comment**

One respondent asked the Department to issue guidance for consultation in regard to the maximum level of reserves that should be maintained as this is a matter which the local government auditor comments on when reviewing the annual accounts.

## **Departmental response**

The Department does not consider it necessary to issue the suggested guidance at this point, but will monitor the situation.

## **11. Clause 9 gives a council power to establish additional funds, with the requirement that income arising from investment of the money in, or other application of, the fund should be carried to the fund.**

## **Comment**

Eight respondents expressed a view that these funds should not be subject to any departmental control nor treated as controlled reserves in accordance with clause 7.

## **Departmental response**

District councils will have the freedom to establish such funds as they consider necessary. The Department is of the view that, in the interests of best practice and prudent financial management, any reserves held in funds should be eligible to be treated as controlled reserves.

## **12. Clause 11 allows a council to borrow money for any purpose relevant to its statutory functions or for the prudent management of its financial affairs.**

## **Comment**

Two respondents asked the Department to create a general power of expenditure for councils in relation to the discharge of their statutory functions.

## **Departmental response**

Section 17(3) of the Interpretation Act provides that, where an enactment empowers any person or authority to do any act or thing, they are also deemed to have been given all such powers as are:

- reasonably necessary to enable them to do that act or thing, or
- incidental to them doing that act or thing.

The Department does not therefore consider it necessary to create a general power of expenditure.

## **Comment**

One respondent recommended additional provision to confer a power on councils to enter into other methods of raising finance, such as local asset backed borrowing.

## **Departmental response**

Clause 24 specifically prevents a council from using local asset backed vehicles for borrowing, requiring all money borrowed, and the interest charged, to be charged on all the revenues of the council.

## **Comment**

One respondent recommended that the Bill should state expressly that borrowing can be applied to both capital and revenue activities.

## **Departmental response**

The Department considers that it would be not be in the interests of good financial management for councils to borrow for revenue activities. It is expected that councils would meet their operating costs from monies raised from the rates and other income generating activities.

## **Comment**

One respondent noted that an important element of the assurance process under the current arrangements for loan sanctions is provided by the Department of the Environment approving the loan. This respondent asked the Department for details of alternative measures proposed to provide the relevant assurance.

## **Departmental response**

The Department is satisfied that assurance will be provided by councils operating within affordable borrowing limits, which will be determined in accordance with the Prudential Code.

## **13. Clause 13 introduces a duty for councils to determine an affordable borrowing limit.**

## **Comment**

Nine respondents noted that there is no requirement for the chief financial officer to report to the council on the review of the affordable borrowing limit. These respondents recommended that this should be included in subordinate legislation.

### **Departmental response**

In keeping with good financial practice and risk management, the Department would expect the chief financial officer to keep the council's financial position under review at all times, and to report to the council on a regular basis.

### **Comment**

Three respondents asked for clarification on how the affordable borrowing limit is to be determined.

### **Departmental response**

The affordable borrowing limit is to be determined by councils in accordance with the Prudential Code.

### **Comment**

One respondent agreed that it is best practice to commit to borrowings that a council can afford to repay, but expressed concern that it had limited control over the consolidation of borrowing between two amalgamating councils, with the affordability of borrowing being reduced through the establishment of the new council with a reduced rates base. This respondent gave the view that this would result in borrowing that would be disproportionate to income generated, which might fall outside limits recommended in regulations.

### **Departmental response**

This is not an issue for this Bill, however, this and other financial issues relating to the reform of local government are being considered by the Strategic Leadership Board and the Regional Transition Co-ordinating Group.

## **14. Clause 14 enables the Department to impose borrowing limits in specific circumstances.**

### **Comment**

Eleven respondents stated that the Department's power (outlined in clause 14(2)) to set a limit on borrowing by a particular district council should be restricted to circumstances where that council has disregarded its duty or obligation under section 13.

### **Departmental response**

The Department intends that this power should be exercised only in exceptional circumstances and where it is considered necessary.

### **Comment**

One respondent asked for clarity as to the circumstances which would prevail for the Department to set limits in relation to borrowing under clause 14(2).

### **Departmental response**

This provision will ensure that, where there is evidence that a council's external debt is, or is in danger of becoming, unsustainable, the Department may limit the council's borrowing capacity. The exact circumstances requiring such limits will vary according to the individual circumstances of councils. The Department intends that this power should be applied rarely, and only in exceptional circumstances.

### **Comment**

Two respondents stated that a definition of "national economic reasons" should be provided in the Bill or in the regulations made under this clause.

### **Departmental response**

"National economic reasons" may be identified in terms of the Northern Ireland or United Kingdom economies. Beyond that, there is no definition that would encompass all possible situations. The Department would intend to use this power only in exceptional circumstances, and where the national economy required it. Regulations made under this power also require the consent of the Department of Finance and Personnel.

### **Comment**

Two respondents stated that regulations should clearly outline the treatment of schemes that are already in progress or have been agreed.

### **Departmental response**

It is not necessary to provide for this in regulations as the Prudential Code requires existing financial commitments to be taken into consideration when determining the affordable borrowing limit.

## **15. Clause 17 deals with credit arrangements entered into by councils.**

### **Comment**

Nine respondents asked for clarification on whether long term liabilities associated with the closure and aftercare costs associated with landfill sites are to be treated as credit arrangements for inclusion when determining the affordable borrowing limit.

### **Departmental response**

It is expected that councils will make provision for closure and post-closure costs of landfill sites through application of their reserves. Where the full amount of such costs is met in this way, the effect on the calculation of the affordable borrowing limit is nil.

### **Comment**

Eight respondents recommended that trade creditors should be excluded from the definition of a credit arrangement as they are part of the working capital requirement and not long term debt.

### **Departmental response**

Clause 17(3)(b) excludes liabilities which fall due in less than 12 months from the date of the transaction. The Department will consult on the regulations which will prescribe the liabilities to be excluded from credit arrangements.

### **Comment**

Ten respondents asked for clarification of the term prescribed liability.

### **Departmental response**

This will be provided in regulations.

### **Comment**

One respondent thought that there was a gap regarding the Department's power to make regulations referred to in clause 17(2)(b).

### **Departmental response**

The Department does not consider that there is any omission or confusion here.

## **16. Clause 22 enables the Department to make regulations about the use of capital receipts.**

### **Comment**

Thirteen respondents interpreted the clause as removing the current requirement (in section 59 of the Local Government Act (Northern Ireland) 1972) for capital receipts to be applied in the first instance against money borrowed for the purpose of acquiring that asset, and asked for the removal of the power outlined in clause 22 for the Department to control this area by regulation.

### **Departmental response**

Clause 44 of, and the Schedule to, the Bill will repeal section 59 of the Local Government Act (Northern Ireland) 1972. Section 59 required that capital from the sale of any council asset had to be used to repay money borrowed for the acquisition of that asset. The Department intends to retain the power to make regulations about the general use of capital receipts.

### **Comment**

One respondent asked to be fully consulted on the drafting of any regulations made under this clause.

### **Departmental response**

As required by clause 43, regulations under clause 22 will be subject to consultation.

## **17. Clause 23 gives local councils the power to invest.**

### **Comment**

One respondent stated that the ability to invest in capital expenditure should not be restricted to resource-rich authorities and that the Department may wish to consider interim arrangements to allow for the transition to the eleven council model.

### **Departmental response**

This is not a matter for this Bill. This and other financial issues relating to the reform of local government are being considered by the Strategic Leadership Board and the Regional Transition Co-ordinating Group.

## **18. Clause 24 makes provision for security for money borrowed by a council, and for the appointment of a receiver in the event of default.**

### **Comment**

One respondent commented that this clause should not be construed or interpreted as preventing a district council from making its assets available so that it can participate in Local Asset Backed Vehicles or other Special Purpose Vehicles which allow its assets to be joint-ventured (within reason) for regeneration purposes or for earning income.

### **Departmental response**

Clause 24 specifically prevents a council from using local asset backed vehicles for borrowing as it requires all money borrowed, and the interest charged, to be charged on all the revenues of the council.

### **Comment**

One respondent asked for paragraphs (5) to (8) of clause 24 to be removed from the Bill as a power to appoint a receiver because of a council debt is not matched by a specific power for councils to apply for the appointment of a receiver in connection with uncollected rates. This respondent went on to state that the costs of amalgamation and consolidation of liabilities could cause a council to owe well over £10,000 to its creditors, resulting in a receiver being sent in by the High Court.

### **Departmental response**

The Department does not consider it is necessary to make this amendment.

Standard insolvency procedures are available to a council that wishes to take action against creditors.

## **Part 2 – Grants to Councils**

## **19. Clause 27 makes provision for the Department to make a rates support grant to district councils for each financial year.**

### **Comment**

Twelve respondents asked for a review of the statutory formula currently used to calculate the resources element before it is applied to the rates support grant, especially for the new district councils taking on additional functions.

Three respondents stressed the importance of having a formula that will ensure that the rates support grant will be allocated to those councils that need the highest levels of financial assistance. Two of those respondents recommended that Targeting Social Need measures should be applied to any review of the statutory formula for the rates support grant.

One respondent asked for further modelling to be undertaken to indicate the impact on councils of the redefined boundaries, and the implications for the rates support grant.

Two respondents stated that the merging of two councils with the lowest rates income and highest levels of deprivation will lead to a major equality issue if the level of rates support grant does not change. They stated that additional resources from central government would be needed to achieve equalisation among councils, asking for the inclusion of provision to allow for payment of an additional grant to councils that will suffer financial disadvantage due to the merger.

One respondent noted that it would be necessary to review the formula in light of the different demographics which would emerge after the reorganisation of local government, especially in light of the large rural councils which will be created.

### **Departmental response**

Initial modelling has indicated that the statutory formula currently used to calculate the resources element of the general grant is suitable for calculating the rates support grant for the eleven new councils. This view has been endorsed by the Strategic Leadership Board. An equality monitoring exercise on the statutory formula is carried out on an annual basis and this continues to show no adverse impact on any of the section 75 groups. Should further modelling exercises highlight that the statutory formula needs to be updated, then a further Equality Impact Assessment will be carried out on the revised formula at that stage.

### **Comment**

Two respondents asked for provision in the Bill to provide for some transitional relief in the first four years of the new council, to allow for an adjustment period before ratepayers are required to pay the significantly higher rates.

One respondent demanded that all the costs of the review of local government be met by central government rather than local rate payers.

### **Departmental response**

Financial issues relating to the reform of local government are being considered by the Strategic Leadership Board and the Regional Transition Co-ordinating Group.

## Comment

Eight respondents expressed alarm that the provision in paragraph (6) stated that the amount payable as the rates support grant could be calculated as nil.

## Departmental response

The resources element of the general grant is being replaced by the rates support grant. The resources element of the general grant can currently be calculated as nil. There is therefore no change in Departmental policy.

## Comment

One respondent expressed concern that, although supportive of the intention to bring the financial regime for local government in Northern Ireland in line with Great Britain, the majority of council funding in Northern Ireland is derived from the district rate collected by an external agency that is not accountable to local government. The respondent would like to see controls introduced to ensure councils are not affected adversely by the actions of agencies which are outside their control.

## Departmental response

The Strategic Steering Group for Land and Property Services and Local Authorities provides a forum for discussing and resolving any issues of concern between councils and Land and Property Services.

## **20. Clause 28 permits the Department to reduce the amount of the de-rating and rates supports grants payable to councils in specified circumstances.**

## Comment

One respondent suggested that any sanctions in circumstances whereby local government failed to achieve or maintain a reasonable standard of economy, efficiency and effectiveness in the discharge of its functions should be applied as a last resort, giving consideration to the likely effect of any such sanctions upon the administration of local government. Further clarity was sought on how such sanctions would be introduced and the role of the local government auditor.

## Departmental response

This clause carries forwards the current provisions for making deductions from the general grant, and applies them to the new de-rating and rates support grants. Where a council has failed to achieve or maintain a reasonable standard of economy, efficiency and effectiveness in the discharge of its functions, or has expenditure that is excessive in the context of its financial resources, central government should have power to intervene, as a last resort, to protect the public purse.

## Comment

One respondent asked for rigorous scrutiny of the intentions behind these new powers.



## **Departmental response**

As stated above, these are not new powers.

## **Comment**

One respondent requested absolute assurance that it would be consulted before the Department uses its powers to defray expenditure and deduct costs in relation to specified bodies from the de-rating or rates support grants.

## **Departmental response**

Deductions to defray expenditure for services provided to all councils by specified bodies are currently made from the general grant. Deductions will be made from the new de-rating and rates support grants on the same basis. As required by clause 43, regulations under clause 28 will be subject to consultation.

## **Part 3 – Payments to Councillors, etc**

**21. Clause 30 will give the Department power to make regulations concerning the payment of allowances and other payments to councillors by councils. Regulations may also require councils to publish a scheme of allowances.**

## **Comment**

Six respondents recommended that, in terms of proper accountability for public funds, all claims for expenses should be supported by appropriate evidence of expenditure incurred in accordance with Her Majesty's Revenue and Customs (HRMC) requirements.

## **Departmental response**

Evidence of expenditure is already required by the Local Government (Travel and Subsistence Allowances to Councillors) (No.2) Regulations (Northern Ireland) 1973 (as amended).

## **Comment**

One respondent stated that paragraph (6) will require ratepayers to pay the costs of voluntary and statutory transition committees which councils have been forced to establish and which were not included in the rates estimates or budgeted for.

## **Departmental response**

The Department currently provides funds (approx. £150,000 package for each council cluster) to assist with the costs of the voluntary transition committees' work of preparing for local government reform in 2010/11. The full costs associated with local government reform, including the statutory transition committees, form part of the Department's bid for additional funding on foot of the PricewaterhouseCoopers report, 'Economic Appraisal of Local Government Service Delivery'.

## **Comment**

One respondent stated that the sentence 'In this section any reference to a council includes a reference to a joint committee' should be removed as it is misleading, inaccurate, and confers power on a 'joint committee' which it is not entitled to.

## **Departmental response**

This provision does not confer any powers on joint committees. Its purpose is to allow payments to be made to members of joint committees.

## **22. Clause 33 allows councils to make payments towards expenditure reasonably incurred by a councillor in attending a conference or meeting on matters relating to the interest of the district or any part of it, and the inhabitants of the district or any part of it.**

## **Comment**

One respondent asked for the inclusion of a further criterion, pertaining to the advancement of the affairs of local government. Another respondent commented in a similar vein to the effect that it would be sufficient for expenses incurred in attending conferences and meetings relevant to the administration of local government, rather than testing if the expenditure was in the interest of the district.

## **Departmental response**

It is the Department's view that councils should consider if the expenditure is in the interest of the district and its inhabitants before deciding to make payments for this purpose.

## **Comment**

Two respondents asked for regulations to stipulate a requirement for each council to assess each event against its relevance to the interests of the district or the inhabitants of that district, and to also assess value for money to ensure appropriate and relevant use of council funds.

## **Departmental response**

As a matter of best practice, the Department would expect councils to assess the benefits, relevance and value for money of any event when deciding to make payments under this clause.

## **Comment**

Two respondents, while noting the provision of clause 35, expressed a view that it would be clearer to make specific provision for payment towards expenditure incurred by an officer of a council in clause 33.

## **Departmental response**

The Department does not consider it is necessary to make such provision for officers.

## **23. Clause 34 gives the Department power to make regulations for the establishment of an independent panel to advise the Department on payments to councillors.**

### **Comment**

One respondent stated that members of the panel should be appointed using the public appointments process, and drew attention to the importance of appropriate expertise and knowledge of the roles and responsibilities of elected members and familiarity with remuneration issues for councillors as criteria for selection.

### **Departmental response**

The Department intends to use the public appointments process to select the members of the panel, using appropriate criteria for selection.

### **Comment**

One respondent asked the Department to consider making specific provision in the draft Bill for an allowance scheme for joint committees.

### **Departmental response**

The Department does not consider this necessary.

### **Comment**

One respondent asked that the recommendations of the independent remuneration panel should be flexible enough to allow councils to make payments to councillors to undertake duties as the council requires.

### **Departmental response**

The independent remuneration panel will make recommendations to the Minister on the system and maximum amount of the various allowances payable to councillors. Councils will retain the power to determine the amount of each allowance for members, provided it does not exceed the maximum amount set by the Department.

### **Comment**

One respondent also asked if the costs associated with the establishment of the panel would outweigh the benefits of changing from current practice.

### **Departmental response**

The costs of the panel have been estimated at less than £20,000 per annum.

Also, this will not be a permanent panel but will only meet as and when required to carry out a review as directed by the Minister.

Northern Ireland is the only part of the United Kingdom where there is no independent body to consider the level and system of councillors' allowances. The establishment of the panel will therefore bring Northern Ireland into line with the rest of the United Kingdom.

**24. Clause 35 provides that, for the purposes of this Part of the Bill, "councillor" includes a member of a committee or sub-committee of a council, whether a member of the council or not, and that expenses payable under clause 33(1) shall also be payable to officers.**

### **Comment**

One respondent commented on this clause recommending the removal of the provision that includes an officer of the council in the definition of the term "councillor" on the basis that it equates paid members of staff already receiving a salary with elected representatives entitled to extra remuneration.

### **Departmental response**

The purpose of this clause is to enable payments to be made to officers towards expenditure incurred in attending conferences or meetings relating to the district or its inhabitants. It does not equate officers with councillors.

## **Part 4 – Miscellaneous powers to make payments**

**25. Clause 36 allows a district council to make payments for any purpose which in its opinion are in the interests of, and will bring direct benefit to, the council, its district or any part of its district, or the inhabitants of the district or any part of its district.**

### **Comment**

Twelve respondents queried the need for this provision, given the proposals to introduce a general power of well-being.

### **Departmental response**

It is proposed to include the general power of well-being in the forthcoming Local Government (Reorganisation) Bill. It is considered necessary to retain this provision until such time as that Bill comes into operation.

**26. Clause 37 requires payments under clause 36 to be commensurate with the direct benefit accruing to its district or any part of its district or to the inhabitants of its district or any part of its district.**

### **Comment**

Seven respondents recommended an amendment to the wording of paragraph 1, so that it would read "... shall not make payments under section 36 unless, in its opinion, the direct benefit accruing...".

### **Departmental response**

The Department does not consider it necessary to amend this clause.

### **Comment**

Two respondents asked for guidance to ensure that a standardised assessment would be used by all councils when assessing whether the direct benefit accruing is commensurate with the payments to be made.

### **Departmental response**

The Department would expect councils to use the guidance on economic appraisal in the public sector when assessing the costs and benefits of any proposed expenditure.

### **27. Clause 38 allows a council to make payments to a fund raised in connection with a particular event directly affecting persons resident in the United Kingdom under specified circumstances.**

### **Comment**

Eight respondents asked for the provision to be extended to apply to circumstances or causes in general rather than being restricted to a particular event.

### **Departmental response**

The Department is not persuaded that there is a need to amend this provision.

### **28. Clause 39 places a restriction on the cumulative amounts payable under provision of clauses 36 and 38.**

### **Comment**

Eleven respondents queried the need for this restriction in the light of proposals to introduce a general power of well-being for district councils.

### **Departmental response**

It is considered necessary to retain this provision until such time as the general power of well-being comes into operation as part of the proposed Local Government (Reorganisation) Bill.

### **29. Clause 40 allows a council to pay reasonable subscriptions to specified classes of associations or voluntary bodies.**

### **Comment**

One respondent suggested that this should include where a council considers it necessary or desirable for an officer to hold membership of a professional body in connection with that officer's discharge of duties.

## **Departmental response**

The Department intends to include a provision that will enable a council to meet the costs of membership of a professional body in cases where the officer's membership of that body is considered necessary or beneficial in carrying out the duties of the job.

## **Part 5 – Supplementary**

### **30. Clause 43 places a requirement on the Department to consult with**

- councils;
  - such associations representative of councils;
  - such associations representative of officers of councils; and
  - such other persons or bodies it considers appropriate
- before making any regulations or Orders, or issuing any guidance, under the provisions of the Act.

## **Comment**

Two respondents asked for assurance, or an express provision, for the Department to consult with joint committees.

One respondent requested absolute assurance that it would be included as a specified consultee.

## **Departmental response**

The Department intends to consult with councils, joint committees and trade unions as a matter of course.

### **31. Clause 46 provides that the title of the proposed Act will be the Local Government Finance Act (Northern Ireland).**

## **Comment**

One respondent expressed a view that, as Part 3 deals with payments to councillors and other expenditure issues, the Bill should bear the title "Finance and Expenditure Bill".

## **Departmental response**

The Department does not consider it necessary to amend the title of the Bill.

## **Departmental response to other comments – not linked to specific clauses**

32. Comment - One respondent disputed the reality of steps taken to modernise the legislative framework for local government finance, given the financial pressures on councils arising through the proposed introduction of three quangos- a Single Waste Authority, a Business Services Organisation and a Municipal Bank.

### **Departmental response**

The Bill is concerned with the day to day financial arrangements of councils and payments by councils. The Department considers it necessary and timely to modernise the legislative framework for local government finance and payments to councillors. The proposals for a Single Waste Authority, a Business Services Organisation and a Municipal Bank are linked to local government reorganisation and are therefore not matters for this Bill.

33. Comment - Two respondents asked why the draft Bill had been screened out for an equality impact assessment, particularly with regard to the equity of the rates support grant, which is of major importance.

### **Departmental response**

Clause 27 gives the Department the power to make regulations for determining the amount of the rates support grant. Such regulations will be screened for equality impact, and will also be subject to consultation.

34. Comment - One respondent expressed concern over the issue of loans from the Department of Finance and Personnel for the implementation of the local government aspects of the Review of Public Administration. The respondent was concerned that this would impact severely on future staffing levels and provide for unfair differential treatment between local government and other RPA sectors, specifically regarding the funding of a voluntary early severance scheme.

### **Departmental response**

Financing the costs of local government reorganisation is not a matter for this Bill.

35. Comment - One respondent recommended that the Department take the opportunity to specify the provisions that would apply to joint committees, similar to Schedule 7 to the 1972 Act.

Another respondent noted that the Bill does not extend, in general terms, to joint committees, and requested a provision to extend the provisions of the Bill, insofar as they are relevant, to joint committees.

### **Departmental response**

The Department does not consider this to be necessary.

Also, as the work of joint committees varies it would not be appropriate to apply the provisions of the Bill to every joint committee. Where current financial provisions have been applied by order to a specific joint committee, subordinate legislation will be made to amend those orders.

36. Comment - Eleven respondents expressed concern that the Bill does not make provision to support new initiatives and models for service delivery, such as introducing powers for councils to participate in public private partnerships or public finance initiatives.

## **Departmental response**

This is being taken forward in Part 1 of the Local Government (Miscellaneous Provisions) Bill 2010, which is currently awaiting Royal Assent.

37. Comment - Nine respondents noted that the Draft Finance Bill does not provide for the signing off of the accounts of the existing twenty-six district councils for 2010-11.

## **Departmental response**

This is not a matter for this Bill. Arrangements for the signing off of the accounts of the 26 councils for 2010/11 are being considered by the Strategic Leadership Board and the Regional Transition Co-ordinating Group.

38. Comment - Two respondents asked for clarification on whether section 59 of the Local Government Act (Northern Ireland) 1972 was to be repealed.

## **Departmental response**

Section 59 of the 1972 Act is included in the Schedule of Repeals.

39. Comment - Eight respondents asked for the repeal of section 96(5)(a) of the 1972 Act, which currently requires all disposals of land for less than best price to be approved by the Department, and replace it with a power enabling the Department to specify in regulations the purpose and limitations applicable to such disposals.

One of those respondents expressed the view that the current role of the Department was not compatible with the proposed introduction of the power of well-being, but also stated any such regulations should include safeguards and scrutiny mechanisms to prevent any possible malpractice.

## **Departmental response**

This is not a matter for this Bill. Also, the Department is not persuaded that the requirement for councils to obtain approval for disposals of land at less than best price should be removed.

40. Comment - Seven respondents asked for the limit specified in section 100 of the 1972 Act (which currently permits a council to make contracts up to £30,000 in value without use of the common seal of the council) to be updated. These respondents recommended that the Department should have the power to amend the limit by regulation.

## **Departmental response**

Section 100 (1A) of the 1972 Act already enables the Department to amend this financial limit by order. The Department will continue to work with councils through bodies such as the Association of Local Government Finance Officers (ALGFO) on this issue.

41. Comment - Three respondents recommended that the Bill should make provision for the inclusion of social clauses in public procurements.

## **Departmental response**



The Department is considering making provision for social clauses by way of an order under section 2 of the Local Government (Best Value) Act (Northern Ireland) 2002. It is not necessary to make provision for social clauses in primary legislation.

42. Comment - One respondent stated it would welcome a framework to support regional or co-operative approaches, for example, taking advantage of shared services or avoiding duplication of resources in neighbouring areas.

### **Departmental response**

This is not an issue for this Bill. The Strategic Leadership Board is considering options for future collaborative work between councils. If statutory provision is needed, it will be taken forward in future legislation.

43. Comment - One respondent indicated that the full implications for joint committees of the Review of Public Administration would not be known before the closing date for responding to this consultation exercise. It asked for the inclusion of provisions in the Bill that would allow for flexibility as more RPA-based financial issues emerge.

### **Departmental response**

Financial issues relating to the reform of local government are being considered by the Strategic Leadership Board and the Regional Transition Co-ordinating Group. Any matters that require legislative measures will be included in the forthcoming Local Government (Reorganisation) Bill.

44. Comment - One respondent asked, in the event of any delays to the legislation for the local government aspects of RPA, for consideration to be given to introducing the power of well-being in the Finance Bill. In addition, the respondent recommended that consideration be given to developing the power of well-being along the lines of the "power of competence in relation to functions" that operates in some countries in Europe.

### **Departmental response**

It is not considered necessary to move the provisions on the power of well-being from the Local Government (Reorganisation) Bill to the Local Government (Finance) Bill.

45. Comment - One respondent stated that, in order to deliver better value to the public purse, councils and joint committees should be able to make capital contributions to capital projects to minimise long term costs, particularly the cost of finance charged. It clarified this by adding that the ability of local government to borrow at more competitive rates, and often for longer periods, than the private sector could result in more cost effective solutions for the public sector, particularly in the case of large scale capital projects which often create long term financial liabilities for councils.

### **Departmental response**

The Department assumes that the comment is about the ability of councils and joint committees to enter into PPP/PFI contracts. The Local Government (Miscellaneous Provisions) Bill, which is currently awaiting Royal Assent, will clarify the powers of councils and certain joint committees to enter into such contracts.

46. Comment - Four respondents noted that the detail of the new financial framework will be provided in regulations, and expressed concern over the content, resource implications, timing and procedure for regulations.

### **Departmental response**

The Department will continue to work with councils through bodies such as the Association of Local Government Finance Officers (ALGFO) when developing the regulations. As required by clause 43, the Department will consult on regulations before they are made.

47. Comment - One respondent requested that monitoring of councils under the new statutory financial framework should be "light touch" and incorporated into the existing audit cycles.

### **Departmental response**

Noted.

## **Letter from Minister re Assembly Procedure for Local Government (Finance) Bill**

From the office of the  
Minister of the Environment



Department of the  
**Environment**  
www.doeni.gov.uk

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Your reference:  
Our reference: SUB/383/2008

July 2008

#### **LOCAL GOVERNMENT (FINANCE) BILL**

I wrote to you previously on 17 June regarding my proposals for a Local Government (Finance) Bill. I understand that this matter was discussed at the meeting of the Environment Committee on 26 June, and that the Committee wanted clarification on the Assembly procedure for this Bill.

I do not anticipate that accelerated passage will be necessary for the proposed Local Government (Finance) Bill.

I have received a number of representations about the timing of the proposed severance scheme for councillors, suggesting that the necessary enabling power should be in place before 2010. My officials are looking into the possibility of moving these provisions into the proposed Local Government (Contracts and Compulsory Purchase) Bill prior to its introduction to the Assembly in early 2009. This would mean that the enabling power could be in place in mid-2009. I anticipate that similar representations may also be made about bringing forward the enabling provisions for the introduction of transition committees.

If this option is exercised, public consultation on severance (and transition committees) – as part of the Local Government (Finance) Bill – will have been completed before the enabling powers are incorporated into the Local Government (Contracts and Compulsory Purchase) Bill. I understand that my predecessor, Arlene Foster, had asked for your co-operation in expediting the scrutiny of the Local Government (Contracts and Compulsory Purchase) Bill at Committee Stage. As the provisions on severance and transition committees are enabling powers, I would hope that this timetable could still be met.

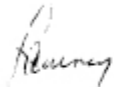
I have not yet reached a final position regarding the proposed transfer of provisions from the Local Government (Finance) Bill to the Local Government (Contracts and Compulsory Purchase) Bill, but should reiterate that these provisions take the form of broad powers

enabling the Department to make subordinate legislation, which would contain the details of the arrangements for severance payments and transition committees.

The draft subordinate legislation will, of course, be submitted to the Committee for consideration before being laid. This will be the case regardless of which Bill is used to introduce the enabling powers for severance and transition committees.

I trust that this will clarify the situation and procedure, and I look forward to working closely with the Committee on the reform and modernisation of local government.

Yours sincerely



**SAMMY WILSON MP MLA**  
Minister of the Environment

## **Departmental Briefing on Local Government (Finance) Bill**

### **Local Government (Finance) Bill**

#### **Background**

1. The Department proposes bringing forward a Local Government (Finance) Bill to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland by introducing provisions to:

- modernise local government finance arrangements;
- allow for the setting up of an independent remuneration panel for Northern Ireland; and
- enable the Department to make severance arrangements for councillors.

2. The Bill will also make preliminary arrangements for the restructuring of local government by introducing provisions to:

- require councils to set up transition committees to work towards the effective merging of the current 26 councils into the 11 new councils;
- enable the Department to issue directions to transition committees; and
- introduce - prior to reorganisation - controls over the current 26 councils with regard to borrowing, disposals, contracts and the application of capital receipts and reserves.

3. Minister of the Environment, Sammy Wilson, wrote to you on 18 June 2008 providing you with a detailed outline of the policy proposals.

## **Need for legislation**

4. The existing framework for the financial arrangements of district councils in Northern Ireland is largely set out in the Local Government Act (Northern Ireland) 1972. The substantial part of the framework is therefore more than 35 years old, and is out of date. In order to update the framework to take account of modern financial practices – and so enable councils to manage their financial affairs to best effect on behalf of the ratepayers – the legislation needs to be amended.

5. It is also proposed to take the following new powers in the legislation to allow the Department to:

- establish an independent remuneration panel to consider councillors' remuneration;
- make severance arrangements for councillors;
- require councils to set up transition committees and issue directions to those committees; or
- introduce controls on borrowing, contracts, disposals and the application of capital receipts and reserves in the period leading to the reorganisation of local government in 2011.

## **Summary of proposals**

### **Finance**

6. The proposed Bill will include provision in the following areas related to the internal finance arrangements of councils:

- removal of the requirements for district councils to gain departmental approval for the application of their funds, proceeds from sale of capital assets and borrowings;

- introduction of certain new powers, including the power to invest;
- introduction of a prudential regime for capital finance, along similar lines to that which operates in England and Wales;
- clarification of the nature of the general grant by replacing the two elements of the grant (the resources element and the de-rating element) with two separate grants – an equalisation grant and a de-rating grant; and
- extending to all departments the general power which allows the Department of the Environment to pay grants to councils.

## **Councillors' remuneration**

7. In relation to councillors' remuneration, it is proposed that the Bill should include provisions in the following broad areas:

- a new power to enable the Department to establish an independent remuneration panel to advise the Minister on the scheme of allowances payable to councillors and the level of allowances for councillors; and
- a new power to enable the Department to make severance arrangements for councillors who do not stand for re-election.

## **Transition committees**

8. It is proposed that the Bill should make provision to:

- require councils to form joint committees (known as transition committees) to prepare for the smooth transition to the new local government structures; and
- enable the Department to specify, in regulations, the functions and powers of transition committees.

## **Controls on, contracts, disposals, etc**

9. The Bill should also make provision, for the period prior to the reorganisation of local government in 2011, to allow for the placing of controls on the current 26 councils regarding:

- borrowings;
- disposals;
- contracts; and
- the application of capital receipts and reserves.

## **Consultation**

10. Local government finance was one of the issues explicitly considered, in 2006, by a sub-group of the Local Government Taskforce. The proposed finance provisions reflect the recommendations of the sub-group.

11. The Finance sub-group of the Local Government Taskforce also identified a number of areas for further consideration, which included controls on the financial activities of existing councils prior to reorganisation.

12. A review of councillors' remuneration arrangements was conducted by the Councillors' Remuneration Working Group ("the CRWG") which was established in 2005 under Direct Rule by the then Minister of the Environment. Its membership included representatives from various sectors with an interest in local government. The Councillors' Remuneration Working Group published its report in June 2006.

## **Timetable**

13. The Department is currently awaiting Executive agreement on the policy proposals and for the Bill to be drafted.

14. The Department intends to consult on the draft legislation towards the end of 2008 into early 2009. There is a possibility that, after consultation, the provisions relating to the independent remuneration panel, severance and transition committees may be moved into the Local Government (Contracts and Compulsory Purchase) Bill before its introduction to the Assembly. This would allow for earlier commencement of these provisions.

## **Financial implications**

15. The finance provisions of the Bill seek to modernise the existing finance arrangements of district councils by empowering councils to take borrowing and investment decisions without Departmental approval. It is anticipated that these provisions will impose no additional costs.

16. It is proposed that the costs of the remuneration panel would be met by central government. At present it is not possible to determine the administration costs of the panel but it is anticipated that these would not exceed £100,000 per year. Local Government Policy Division would provide the Secretariat to the Panel.

17. In the case of severance pay, the costs of a future scheme will depend upon the number of councillors who pursue this option. The detail of the severance scheme will be set out in subordinate legislation which will come before the Assembly before it is introduced. The Department intends to initiate a detailed consultation on severance before the end of the year and more detailed information about the likely costs should be available when this exercise has been carried out.

Local Government Policy Division  
Department of the Environment  
September 2008

## **Department worked example on Local Government (Finance) Bill**

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Your reference:  
Our reference:

Date: 20 October 2010

Dear Alex

## **Local Government Finance Bill**

During the informal Clause by Clause consideration of the Bill the Committee requested a worked example to show the anticipated sequence of events the Department would take in a situation where it is made aware that a Council has decided to make, or is about to make, irregular and improper expenditure. The request stemmed from concerns some members had that the legislation would not prevent irregular actions occurring but would only deal with the consequences after such actions.

Before looking at a particular example, it is important first to look at what obligations are already in place in councils, what best practice governance arrangements should be in place and what the draft Bill will do to further strengthen that overall position. All of these measures, if applied correctly, should prevent any financial irregularity or impropriety in councils.

The Local Government (NI) Order 2005 ("the 2005 Order") requires each council to ensure that its financial management is adequate and effective. Regulations under that Order compel councils to have a sound system of internal control that is regularly reviewed and audited by internal audit. The 2005 Order also requires a yearly audit to be undertaken by the Local Government Auditor. Any lapses in standards and application of procedures should be captured either by internal audit controls or by the Local Government Auditor in his yearly review.

In relation to governance in councils, best practice, based on guidance issued by CIPFA and other appropriate professional bodies, points to a senior officer being made responsible for ensuring that appropriate advice is given on all matters pertinent to a proposed decision and in particular, financial matters. The ultimate responsibility for ensuring that such advice is provided rests with the Chief Executive as head of the administrative organisation. In this context it is to be expected that if a council is proposing to use funds improperly or illegally, the Chief Executive (or Chief Finance Officer) would advise the council accordingly in the strongest possible terms at the earliest opportunity.

On the Bill itself, the essence of the financial element is to modernise the existing local government financial framework to ensure that councils, as autonomous bodies, have increased financial responsibility and greater accountability. In doing so the Bill will relax the departmental controls for the financial management of council affairs to more clearly place that responsibility direct with the elected local representatives. However, the Bill, together with the range of subordinate legislation, places additional obligations on councils including to have regard to guidance issued or specified by the Department, in particular the CIPFA Prudential Code for Capital Finance in Local Authorities.

Whilst all of these measures taken together should provide for prudent financial management of councils, the question is what action the Department would take if the measures fail or are ignored or circumvented.



Once the Department became aware either (a) that there was the potential for a council to act improperly, or (b) that there were reasonable grounds to believe that it had acted improperly, then it would consider asking the Local Government Auditor to carry out an Extraordinary Audit, which is provided for already under the 2005 Order. This can be carried out at any time of the year, giving only 3 days' notice. The Local Government Auditor would consider whether, in the public interest, he should report on the matter and if he does produce a public interest report, the council is required under the 2005 Order to consider it within 1 month. If the Local Government Auditor discovers any item of account where it appears it may be unlawful he can take the matter to the courts for a declaration that it is contrary to law.

Depending on the circumstances of the particular irregularity, the Department may also be able to intervene. The Bill provides the Department with a power to intervene and reduce the Borrowing Limits of councils. It allows for the Department to do so by direction against a specific council, or by regulation to all councils when the national economic situation demands it. Also, whilst the Department is not currently intending to impose any control on the Reserves, the Bill does provide a power for the Department to do so if the circumstances are sufficiently extreme to require it.

Whilst it may be viewed that these controls would be taken after the event, probably in reaction to the Local Government Audit report, any other form of control would be against the ethos of the Bill which, to reiterate, is to relax departmental financial control and place the onus on councils.

## **Chief Financial Officer**

The Committee has commissioned research on the separation of the roles of Chief Executive and Chief Financial Officer. Against that background, the Department considered that it would be useful to provide the Committee with this additional briefing.

Clause 1(2) of the Bill requires a council to designate a Chief Financial Officer (CFO). Section 54 of the current legislation, the Local Government Act (NI) 1972, already states that a council shall designate a chief financial officer. The Bill does not mention the separation of roles of the CFO and the Chief Executive.

The greater freedom which the Finance Bill gives to councils in relation to managing their own financial affairs and the relaxation of Departmental controls over council finances will change the role of the CFO. Also, councils will be able to invest for financial management purposes and to borrow without Departmental sanction. Given this wider ambit for the CFO, the department intends to issue councils with the CIPFA Statement on the Role of the Chief Financial Officer, which provides a best practice guide. The CIPFA statement, in summary,

- advises that the CFO should be a member of the senior management team; and
- requires that he/she should be a qualified accountant;
- implies that there should be separation of the Chief Executive Officer and CFO roles.

In practical terms, the Finance Bill will require councils, as before, to designate a CFO, but in making this designation they should consider the best practice guidance in the CIPFA CFO Statement. It is for individual councils to decide the extent to which it is practicable for them to comply with this best practice in order to ensure that there is proper administration of its financial affairs.

To be clear, neither this Bill, nor its supporting Regulations, would force councils to introduce role separation or meet any other recommended criteria of the CIPFA Statement.

In seeking to try to comply as far as feasible with that best practice, there would probably be a range of application of role separation. A limited number of councils already have this arrangement. Others are likely to opt to introduce such a step to draw closer to CIPFA best practice. Other, perhaps smaller councils may not see such an arrangement as being practicable for them.

Looking ahead to when there are 11 larger councils, with additional responsibilities and functions, it would be sensible to re-consider this issue and decide, in consultation with relevant stakeholders, if it is necessary to strengthen the guidance or even legislate as is considered desirable.

The Committee may wish to note that, as an aid to wider understanding of these issues, similar clarification on these two points is being provided to Northern Ireland Local Government Association (NILGA), Society of Local Authority Chief Executives (SOLACE), the Association of Local Government Finance Officers (ALGFO) and Local Government Audit (LGA).

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey  
DALO

## **Local Government (Finance) Bill - Policy Document**

From: Sammy Wilson  
Minister of the Environment

Date: XX June 2008

To: Environment Committee  
Local Government (Finance) Bill: Policy

### **Background**

1. I propose to bring forward a Local Government (Finance) Bill to modernise the current legislative framework relating to local government finance and councillors' remuneration in Northern Ireland by introducing provisions to:

- modernise local government finance arrangements;
- allow for the setting up of an independent remuneration panel for Northern Ireland; and
- enable my Department to make severance arrangements for councillors.

2. The Bill will also make preliminary arrangements for the restructuring of local government by introducing provisions to:

- require councils to set up transition committees to work towards the effective merging of the current 26 councils into the 11 new councils;
- enable my Department to issue directions to transition committees; and
- introduce, prior to reorganisation, controls over the current 26 councils with regard to borrowing, disposals, contracts and the application of capital receipts and reserves.

3. You are asked to note:

- the policy content of the proposed Bill;
- the drafting of the proposed Bill; and
- my Department's intention to consult on the policy and draft Bill simultaneously.

## **Finance Arrangements**

4. The proposed legislation will include provision in the following areas:

- removal of the requirements for district councils to gain departmental approval for the application of their funds, proceeds from sale of capital assets and borrowings;
- introduction of certain new powers, including the power to invest;
- introduction of a prudential regime for capital finance, along similar lines to that which operates in England and Wales;
- clarification of the nature of the general grant by replacing the two elements of the grant (the resources element and the de-rating element) with two separate grants – an equalisation grant and a de-rating grant; and
- extending to all departments the general power which allows the Department of the Environment to pay grants to councils.

## **Background**

5. The existing framework for the financial arrangements of district councils in Northern Ireland is mostly set out in the Local Government Act (Northern Ireland) 1972. The substantial part of the framework is more than 35 years old, and is out of date.

6. Under the current legislation, district councils are subject to controls by my Department in the management of their finances. I propose the relaxation of some of these controls in line with the most appropriate modern management practices elsewhere in the UK, enabling the new councils, with their wider functions, to manage their financial affairs to best effect on behalf of the ratepayers.

## **Capital finance**

7. I propose a new borrowing power so that district councils will be free to raise finance for capital expenditure, without the need for prior approval from my Department, where they can afford to service the debts without central government support. I also propose reserve powers for my Department to set limits on borrowings and credit but I envisage that these would only be used in exceptional circumstances.

8. I propose a clear and unambiguous power for investment by district councils, not only for any capital purpose relevant to their functions, but also for the purpose of the prudential management of their financial affairs.

9. Both the borrowing and investment powers of councils would be underpinned by a new power for my Department to issue guidance in relation to the exercise of those powers, to which the councils would be required to have regard.

## **Prudential regime**

10. Local authorities in England and Wales and, to a lesser extent, in Scotland, have considerable flexibility over their borrowings to fund capital investments such as new buildings, waste management facilities or road schemes. Under the Local Government Act 2003 (c.26) and the Local Government in Scotland Act 2003 (asp1), they are subject to a prudential regime for capital finance.

11. The regime relies upon local authorities making an appropriate determination of what they can realistically afford to borrow. In making this determination they are required to have regard to the Chartered Institute of Public Finance and Accountancy's Prudential Code for Capital Finance in Local Authorities. This provides guidance on how to decide prudent and affordable levels of debt. I would like to introduce a similar regime for Northern Ireland.

## **General grant**

12. Currently, district councils receive a general grant from my Department under provision of the Local Government (Miscellaneous Provisions) (NI) Order 2002. This grant is made up of two elements – a resources element and a de-rating element.

13. The title "general grant" has, in the past, often proved to be misleading. I therefore propose, in the interests of clarity, that the general grant should be replaced by two separate grants, to be known as the equalisation grant (to replace the resources element of the general grant) and the de-rating grant (to replace the de-rating element of the general grant). This amendment will not impact on the statutory formulae for the distribution of the separate grants.

## **Other grants**

14. Article 7 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002 provides my Department with a general power to pay grants to district councils. This applies to any grant connected with a function of a council, other than the general grant.

15. This provision has in the past been used by my Department to pay grants to councils on behalf of other departments (e.g. in respect of construction products and energy efficiency). Auditors have queried the use of this provision on the grounds that my Department was paying out grants in respect of policies for which it had no responsibility and over which there were inadequate controls.

16. I therefore propose that the Bill should contain a provision along similar lines to the current Article 7 power, but extending the power to all Departments to pay grants in relation to their areas of responsibility, rather than just the Department of the Environment.

## **Funds**

17. The Bill will include provisions in the following broad areas:

- a new requirement for district councils to establish a general fund, replacing the current district fund;
- the requirement for Departmental approvals in relation to other funds such as capital funds, renewal and repairs funds and consolidated loans funds to be removed; and
- a new power for my Department to specify by regulation other funds that may be established – for example, an insurance fund or an election fund – with my Department's approval.

## **Development of policy and engagement with stakeholders**

18. There has been pressure for some time from local government finance officers for modernisation of the current regime.

19. Local government finance was one of the issues explicitly considered, in 2006, by a sub-group of the Local Government Taskforce. The sub-group considered a full range of options for change, taking into consideration the arrangements for local government finance in other parts of the United Kingdom.

20. The proposed finance provisions reflect the recommendations of the sub-group, incorporating aspects of the arrangements in other jurisdictions, but tailored to fit the context and circumstances of local government in Northern Ireland as appropriate.

## **Councillors' Remuneration**

21. The proposed legislation will include provisions in the following broad areas:

- a new power to enable my Department to establish an independent remuneration panel to advise me on the level of allowances for councillors; and
- a new power to enable my Department to make a scheme to allow severance payments to be made to councillors who do not stand for re-election.

## **Background**

22. Currently my Department determines the maximum level of the various allowances for councillors. Individual councils decide the amount of allowances payable to each councillor within the maximum determined by the Department. I propose the introduction of a system similar to that in Scotland and Wales where an independent remuneration panel advises the Minister on the level of allowances for councillors.

23. Against the background of the planned reduction in the number of councils and councillors, my predecessor, Arlene Foster, said she would introduce a severance scheme to recognise the contribution of long-standing councillors who opt not to stand for re-election. Currently my Department does not have the legislative authority to enable severance payments to be made to councillors. I therefore consider that provision should be made to enable my Department to make a severance scheme.

Development of policy and engagement with stakeholders

24. A review of councillors' remuneration arrangements was conducted by the Councillors' Remuneration Working Group ("the CRWG"). The CRWG was established in 2005 under Direct Rule by the then Minister of the Environment. Membership of the CRWG included representatives from various sectors with an interest in local government.

25. The CRWG considered the merits of the English model, where each authority establishes and maintains its own independent remuneration panel, against the model adopted in Scotland and Wales, where a remuneration committee or panel operates nationally. As the new councils will have equal statutory responsibilities and, regardless of the size of the council, all councillors will have to fulfil broadly similar roles and discharge similar responsibilities, the Scottish and Welsh model was considered more suitable.

26. The Councillors' Remuneration Working Group published its report in June 2006.

## **Transition Committees**

27. The proposed legislation will include provisions that will:

- require councils to form joint committees, known as transition committees, to prepare for the smooth transition to the new local government structures; and
- enable my Department to specify, in regulations, the functions and powers of transition committees.

## **Background**

28. As part of the restructuring of local government in Wales in the 1990s, the Local Government (Wales) Act 1994 imposed a requirement on all authorities whose areas were to be included wholly or partly in the area of a new council to establish a joint committee to consider and advise on transitional matters. The valuable contribution which transition committees made in facilitating change has been acknowledged in various reports and reviews of the reorganisation of local government in Wales. The Local Government etc (Scotland) Act 1994 and Part I of the Local Government and Public Involvement in Health Act 2007 (which makes provision for structural and boundary change in England) also make provision for transition between old and new local government bodies.

29. I propose that the constituent councils of each of the new local government areas should set up a transition committee in respect of that new council area. The transition committee would work towards the effective merging of the existing councils into each new council, for example, by gathering information concerning the property, assets, liabilities, contracts and staff that are to transfer from the old councils to each new council.

30. The proposed legislation will contain a power enabling my Department to specify, in regulations, the functions and powers of transition committees.

## **Development of policy and engagement with stakeholders**

31. My Department conducted research into the implementation of structural change at local government level across different jurisdictions. A system of transition committees, similar to Wales in the 1990s, but tailored to the context of the RPA reorganisation of local government in Northern Ireland, has been identified as the most effective way of preparing for structural change.

32. Proposals for transition committees are being considered by the Strategic Leadership Board. The membership of the Strategic Leadership Board includes 10 political party representatives, nominated by the five main political parties and the Northern Ireland Local Government Association (NILGA). I chair the Board, and the NILGA President is Vice-Chair. The Board is supported by an advisory officer group of 3 senior officials drawn from the departments transferring functions and 3 senior local government representatives.

## **Controls on Council Borrowings, Disposals, Contracts and the Application of Capital Receipts and Reserves**

33. I propose to make provision, for the period prior to reorganisation of local government in 2011, to allow for the placing of controls on the current 26 councils regarding:

- borrowings;
- disposals;
- contracts; and
- the application of capital receipts and reserves.

### **Background**

34. The proposed legislation will require an existing council to obtain written consent from all councils due to join with it in the formation of a new local government district before entering into any of the above transactions that exceed specified financial limits. The aim is to prevent an existing council from binding a new council to sizeable or long-term contracts or loan arrangements, or from disposing of land, property or capital receipts and reserves without referral to the other councils making up the new council.

35. This would reflect equivalent provision in England, Scotland and Wales.

### **Development of policy and engagement with stakeholders**

36. The Finance sub-group of the Local Government Taskforce identified a number of areas for further consideration, which included controls on the financial activities of existing councils prior to reorganisation.

37. Research was conducted by my Department into controls introduced in other parts of the United Kingdom as part of the preparation for the reorganisation of local government. Legislation for England, Scotland and Wales placed controls on contracts, disposals, borrowings and the application of capital receipts and reserves by existing authorities, subject to financial thresholds, in the period immediately prior to their reconstitution as new authorities.

### **Consultation**

38. Due to the nature of some of the proposed provisions to modernise local government finance, I consider that a consultation process that allows simultaneous consideration of policy proposals with the legislation giving effect to those proposals would be appropriate.

39. I therefore propose to conduct a full public consultation on both the policy and the draft legislation.

## **Impact Assessments and other Considerations**

### **Cost and staffing implications**

40. In essence, the finance provisions of the Bill seek to modernise the existing finance arrangements of district councils by empowering councils to take borrowing and investment decisions without Departmental approval. It is anticipated that these provisions will impose no additional costs.

41. It is proposed that the costs of the remuneration panel would be met by central government. It is not possible to determine the administration costs of the panel but it is anticipated that these would not exceed £100,000 per year. Local Government Policy Division would provide the Secretariat to the Panel.

42. In the case of severance pay, the costs of a future scheme will also depend upon the number of councillors who pursue this option. The detail of the severance scheme will be set out in subordinate legislation which will come before the Assembly before it is introduced. More detailed information about the costs will be made available at that time.

43. My Department is preparing a Strategic Outline Business Case for consideration by the Strategic Leadership Board at its next meeting, which will provide a basis for future funding decisions regarding the modernisation and reorganisation of local government. The costs and staffing of transition committees are to be considered in the context of the Strategic Outline Business Case by the Strategic Leadership Board, which will then make recommendations to the Department.

### **Human rights**

44. The proposed legislation is not likely to engage Convention Rights.

### **Equality impact assessment**

45. My officials have carried out a screening for equality impact and I am satisfied that the proposed legislation will not lead to a discriminatory or negative differential impact. The severance scheme for councillors is likely to be more attractive to councillors with long service who would, therefore, be older. The scheme does, however, offer the opportunity to encourage more under represented groups, such as women and young people, to stand as councillors.

### **Impact on Targeting Social Need**

46. I consider that the proposed legislation will not have any impact on social inclusion. A full impact assessment is not therefore considered necessary.

Impact on relations, co-operation or common action on a North/South or East/West basis

47. The proposed legislation will have no impact on North/South relations or on co-operation on an East/West basis.

### **EU issues**

48. There are no issues of relevance to the EU.



## **Examiner of Statutory Rules Reply re Departmental Amendments to Local Government (Finance) Bill**

From: Nabney, Gordon  
Sent: 16 November 2010 15:10  
To: McGarel, Alex  
Cc: Mageean, Shauna; McCann, Sean

Subject: RE: Additional amendment to be tabled by the Dpartment to Local Govrenment Finance bill

Alex

### **Local Government Finance Bill**

This provision is indeed very common – fairly standard practice here, at Westminster and in the Scottish Parliament. It appears in other Bills currently before the Assembly (for example High Hedges and Clean Neighbourhoods and Environment, and many others).

On a minor drafting matter, it might perhaps be better if the Department were to table an amendment leaving out the whole of Clause 43 and replacing it with a new Clause 43 headed "Regulations and orders" and incorporating the existing clause 43 as subsection (1) and the substance of the proposed amendment as subsection (2)".

I hope that that is helpful.

Regards

Gordon

From: McGarel, Alex  
Sent: 16 November 2010 13:13  
To: Nabney, Gordon  
Cc: Mageean, Shauna; McCann, Sean

Subject: Additional amendment to be tabled by the Dpartment to Local Govrenment Finance bill

Gordon

I don't know if you would be able to comment (even informally) on the following prior to the Environment Committee's formal clause by clause consideration of the Local Government (Finance) Bill this coming Thursday?

We have just been advised that the Department is considering tabling the following amendment at Consideration Stage to allow for any regulation or orders to include incidental, supplementary, consequential, transitory or savings provisions as may be considered expedient or necessary. They indicate the it 'is usual' to do this. Could you confirm that this is 'usual' – it seems rather broad to me.

The relevant extract from the Department's letter reads as follows:

## **Additional amendments to be tabled at Consideration Stage**

It is usual to take a power in a Bill to allow any regulations or orders to be made under the Bill to include such incidental, supplementary, consequential, transitory or saving provisions as may be considered expedient or necessary. Although such provision was made in relation to regulations made under Clause 27, it was noticed that no such provision was included for any other regulations to be made under the Bill.

The Minister therefore intends to table an amendment to Clause 43 at Consideration Stage and this, in turn, will require a consequential amendment to be made to Clause 27.

Clause 43, Page 16, Line 20

At end insert -

'(2) Regulations and orders under this Act may contain such incidental, supplementary, consequential, transitory or saving provisions as the Department thinks necessary or expedient.'

Clause 27, Page 9, Line 40

Leave out lines 40 and 41.

Apologies for the last minute notice

Regards

Alex

**Alex McGarel**

Clerk to the Committee for the Environment  
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**SOLACE views on Clause 1 of Local Government  
(Finance) Bill**



20 October 2010

Mr Sean McCann  
Assistant Clerk  
Environment Committee  
Room 247  
Parliament Buildings  
Stormont Estate  
BELFAST  
BT4 3XX

Dear Mr McCann

**Local Government Finance Bill Clause 1(2)**

I refer to the above Clause 1(2) within the above Bill which is currently at Committee Stage.

I am aware that the Committee is seeking views on this Clause. SOLACE (Society for Local Authority Chief Executives) has no strong views either way in relation to the Council designating an officer as its Chief Finance Officer. However, it is important that this does not undermine the Chief Executive's role as Chief Accounting Officer.

It is important that the most senior officer in a public sector organisation holds the ultimate position as the Chief Accounting Officer. The Chief Accounting Officer being the person who can take decisions on behalf of the Council and be accountable for these decisions.

I hope this clarifies this issue on behalf of SOLACE.

Yours sincerely

Liam Hannaway  
Honorary Secretary  
SOLACE NI

Copy to: Mrs Nora Winder, Chief Executive, NILGA  
Mr Joe Campbell, ALGPO

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## Draft Local Government (Capital Finance and Accounting) Regulations (NI) 2011

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STATUTORY RULES OF NORTHERN IRELAND

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2011 No.

LOCAL GOVERNMENT

Local Government (Capital Finance and Accounting)  
Regulations (Northern Ireland) 2011

*Made* - - - - - \*\*\*  
*Coming into operation* - - - - - \*\*\*

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The Department of the Environment makes the following Regulations in exercise of the powers conferred by sections 2(1), 13, 17(3)(c), 18(3), 19(2), 20(3), 22, and 25(1)(b) of the Local Government Finance Act (Northern Ireland) 2011(a).

In accordance with section 44(1) of that Act, the Department has consulted councils, such associations representative of councils, such associations representative of officers of councils and such other persons or bodies as appear to the Department to be appropriate.

## PART 1 PRELIMINARY

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011 and shall come into operation on 1<sup>st</sup> April 2011.

(2) In these Regulations, unless the context indicates otherwise, any reference to a Part or section is a reference to a Part or section of the Local Government Finance Act (Northern Ireland) 2011.

(3) In these Regulations—

“CIPFA” means the Chartered Institute of Public Finance and Accountancy; and

“retirement benefits” means benefits payable pursuant to statutory requirements under an arrangement accounted for as a defined benefit pension plan or as other long-term employee benefits (as defined in accordance with proper practices).

## PART 2 ACCOUNTING

### Proper practices

2. For the purposes of section 2(3) (accounting practices) the accounting practices contained in the following codes of practice are proper practices—

- (a) “Code of Practice on Local Authority Accounting in the United Kingdom” published by CIPFA, as amended or reissued from time to time;
- (b) “Best Value Accounting Code of Practice” published by CIPFA, as amended or reissued from time to time.

### Accounting for capital expenditure

3. Where expenditure of a council—

- (a) is expenditure which falls to be capitalised in accordance with proper practices (“capital expenditure”); or
- (b) is treated as being capital expenditure by virtue of regulations made, or a direction given, under section 19(2) or (3),

that expenditure need not be charged to the general fund of the council.

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(a) 2011 c.

**Retirement benefits: accounting treatment**

4. For a financial year beginning on or after 1st April 2011, a council shall charge to the general fund an amount equal to the retirement benefits payments and contributions to pension funds which are payable for that financial year.

**Short-term accumulating compensated absences**

5. Where, in accordance with proper practices, a council includes an amount in respect of a liability for short-term accumulating compensated absences in its balance sheet, the council must not charge to the general fund an amount in respect of that liability until the date on which the liability ceases or is discharged.

**Duty to make revenue provision in respect of capital expenditure**

6. During the financial year beginning on 1st April 2011 and every subsequent financial year, a council shall determine for the current financial year an amount of minimum revenue provision which it considers to be prudent and—

- (a) shall charge to the general fund that minimum revenue provision for that financial year; and
- (b) may charge to the general fund any amount in addition to that minimum revenue provision.

in respect of the financing of capital expenditure incurred by the council in that year or in any financial year prior to that year.

**PART 3  
BORROWING**

**Code of practice**

7. In complying with their duty under section 13(1) (duty to determine affordable borrowing limit), a council shall have regard to the code of practice entitled the "Prudential Code for Capital Finance in Local Authorities" published by CIPFA, as amended or reissued from time to time.

**PART 4  
CREDIT ARRANGEMENTS**

*Transactions which are not credit arrangements*

**Liabilities that do not arise from capital expenditure**

8.—(1) The liabilities of a council specified in paragraph (2) are liabilities specified for the purposes of section 17(3)(c)(exclusion of certain liabilities from definition of "qualifying liabilities").

(2) The liabilities specified for the purposes of paragraph (1) are liabilities that do not arise from a transaction which results in the council being required, in accordance with proper practices, to recognise a fixed asset in any balance sheet.

**Retirement benefits: exclusion from credit arrangements**

9. Liabilities for retirement benefits appropriated to a pension reserve in accordance with proper practices are liabilities specified for the purposes of section 17(3)(c).

**Varied transactions**

10. For the purposes of Part 1 (financial administration), a council shall be taken to have entered into a credit arrangement where—

- (a) on or after 1st April 2011, it enters into a transaction (“the new transaction”) which varies a transaction entered into previously, whether before, on or after 1st April 2011 (“the earlier transaction”);
- (b) the earlier transaction did not result in the council being taken to have entered into a credit arrangement; and
- (c) the council would, if it had entered into the earlier transaction as varied by the new transaction on—
  - (i) the date on which the earlier transaction was entered into; or
  - (ii) if later, 1st April 2011,

be taken to have entered into a credit arrangement,

and the date on which it is taken to have entered into the credit arrangement by virtue of this regulation is the date on which it enters into the new transaction.

**Calculation of cost of credit arrangements**

11. For the purposes of section 18(2) (entry into a credit arrangement or variation to be treated as the borrowing of an amount equal to the cost of the arrangement or variation), the cost of a credit arrangement or variation of a credit arrangement shall be the amount of the liability in respect of that arrangement or variation which is shown, in accordance with proper practices, in the council’s accounts.

**PART 5**

**CAPITAL EXPENDITURE**

**Expenditure to be capital expenditure**

12.—(1) For the purposes of Part 1 (financial administration) the following expenditure of a council, incurred on or after 1st April 2011, shall be treated as being capital expenditure insofar as it is not capital expenditure by virtue of section 19(1) —

- (a) expenditure incurred on the acquisition or preparation of a computer program, including expenditure on the acquisition of a right to use the program, if the council acquires or prepares the program for use for a period of at least one year for any purpose relevant to its functions;
- (b) the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the council, be capital expenditure;
- (c) the repayment of any grant or other financial assistance given to the council for the purposes of expenditure which is capital expenditure;
- (d) subject to paragraph (2), the acquisition of share capital or loan capital in any body corporate; and



(e) expenditure incurred on works to any land or building in which the council does not have an interest, which would be capital expenditure if the council had an interest in that land or building.

(2) Where the expenditure referred to in paragraph (1)(d) is—

- (a) an investment for the purposes of the prudent management of a council's financial affairs in accordance with section 23(b); and
- (b) the investment is admitted to an official list maintained by a competent authority in an EEA State,

it shall not be treated as being capital expenditure by virtue of this regulation.

(3) In paragraph (2)—

"competent authority" means an authority which is responsible for maintaining the official list in an EEA state;

"EEA State" has the meaning given by Schedule 3 to the Financial Services and Markets Act 2000(a);

"official list" in relation to the United Kingdom has the meaning given by section 103(1) of the Financial Services and Markets Act 2000, and in relation to any other EEA State means the equivalent list maintained by the competent authority of that State.

#### **Expenditure not to be capital expenditure**

13. Expenditure incurred by a council on the giving of loans, grants or other financial assistance—

- (a) to an officer of the council pursuant to the terms and conditions of his employment; or
- (b) in connection with the appointment of a person as an officer of the council, to that person,

in so far as, apart from this regulation, it would be capital expenditure, shall be treated for the purposes of Part 1 as not being capital expenditure.

## PART 6 CAPITAL RECEIPTS

### *Sums to be treated as capital receipts*

#### **Repayment of loan etc. to a council**

14.—(1) For the purposes of Part 1 (financial administration), the sums referred to in paragraph (2), paid on or after 1st April 2011, shall be treated as capital receipts.

(2) The sums referred to for the purposes of paragraph (1) are sums paid to a council as repayment of any loan, grant or other financial assistance given by the council for such a purpose that, if the giving of that financial assistance had been expenditure incurred at the time of the repayment, it would have constituted capital expenditure.

#### **Loan capital**

15.—(1) Subject to paragraph (2), for the purposes of Part 1, a sum received by a council on or after 1st April 2011 in respect of the redemption on maturity of a bond held by it which, apart from this regulation, would not be a capital receipt, shall be treated as a capital receipt.

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(a) 2000 c.8

(2) Paragraph (1) applies only if at the time of redemption expenditure on the acquisition of the bond would be treated as capital expenditure.

*Sums not to be treated as capital receipts*

**Capital receipts not exceeding £5,000**

16.—(1) A sum received by a council which, apart from this regulation, would be a capital receipt by virtue of section 20(1) shall not be treated for the purposes of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the council in respect of the disposal of an interest in a capital asset, for which the sum is paid, does not exceed £5,000.

(2) A sum received by a council which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 14, shall not be treated for the purposes of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the council as repayment of a loan, grant or other financial assistance, for which the sum is paid, does not exceed £5,000.

**Operating and finance leases**

17. A sum received by a council—

- (a) under any arrangement which is treated, in accordance with proper practices, as an operating lease or a finance lease;
- (b) which, apart from this regulation, would be a capital receipt; and
- (c) which, in accordance with proper practices, is to be credited to the general fund,

shall not be treated for the purposes of Part 1 as a capital receipt.

**Use of capital receipts**

18. Capital receipts may only be used for one or more of the following purposes—

- (a) to meet capital expenditure;
- (b) to repay the principal of any amount borrowed;
- (c) to pay a premium charged in relation to any amount borrowed;
- (d) to meet any liability in respect of credit arrangements, other than any liability which, in accordance with proper practices, must be charged to the general fund;
- (e) to make all or part of a payment to a person, where the obligation to make that payment arises on the disposal of an asset, as a result of an agreement made at the time of the acquisition of that asset, or in relation to such an agreement.

**PART 7**  
**SUPPLEMENTARY**

**Guidance**

19. In carrying out its functions under Part 1 (financial administration), a council shall have regard to the code of practice contained in the document entitled "Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes" published by CIPFA, as amended or reissued from time to time.

Sealed with the Official Seal of the Department of the Environment on \*\*\*

*Wesley Shannon*  
A senior officer of the  
Department of the Environment

(L.S.)

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations make provisions for capital finance and accounts under the Local Government Finance Act (Northern Ireland) 2011 ("the 2011 Act").

**Regulation 2** identifies, for the purposes of the definition of "proper practices" referred to in section 2 of the 2011 Act, certain documents that contain accounting practices.

**Regulation 3** provides that capital expenditure need not be charged to the general fund of a council.

**Regulation 4** requires a council to charge to their general fund for a financial year an amount equal to retirement benefits payments and contributions to pension funds payable for that year.

**Regulation 5** states that a council must not charge an amount in respect of liability for short-term accumulating compensated absences to the general fund until the date on which the liability ceases or is discharged.

**Regulation 6** requires a council to determine and charge to their general fund a minimum revenue provision in respect of the financing of capital expenditure for that current financial year. A council may also charge an additional amount for the current year or any previous year.

**Regulation 7** requires councils to have regard to the "Prudential Code for Capital Finance in Local Authorities" when determining how much it can afford to borrow under section 13 of the 2011 Act.

**Regulation 8 and 9** make provision excluding certain liabilities from the definition of "qualifying liabilities", under section 17 of the 2011 Act, so that certain transactions are not credit arrangements.

**Regulation 10** makes provision for varied transactions to be credit arrangements and **regulation 11** sets out how the cost of credit arrangements are to be calculated.

**Regulations 12 and 13** provide for expenditure which is, and which is not, to be treated as capital expenditure for the purposes of Part 1 of the 2011 Act.

**Regulations 14 to 17** provide for certain sums received by a council to be treated, or not to be treated, as capital receipts.

**Regulation 18** provides that capital receipts may only be used for specified purposes.

**Regulation 19** requires that a council, in carrying out its capital finance functions, must have regard to the code of practice in "Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes".

Copies of the following documents referred to in these Regulations may be obtained from the Chartered Institute of Public Finance and Accountancy, 3 Robert Street, London WC2N 6RL ([www.cipfa.org.uk](http://www.cipfa.org.uk)):

- (a) The "Prudential Code of Capital Finance in Local Authorities";
- (b) The "Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes";

ANNEX B

- (c) "Best Value Accounting Code of Practice";
- (d) "Code of Practice on Local Authority Accounting in the United Kingdom".

## Departmental letter re Local Government (Finance) Bill Amendments



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Your reference:  
Our reference:

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX 22 November 2010

Dear Alex

## **Local Government Finance Bill**

At the informal clause by clause consideration of the Bill on 21 October 2010, the Committee requested sight of all proposed Departmental amendments prior to formal clause by clause scrutiny (currently scheduled for 25 November). Details of proposed amendments to clauses 24, 27 and 43 were provided for the Committee's consideration in my letter of 4 November [CQ 175/10].

Following the informal clause by clause consideration of the Bill on 21 October 2010, the Committee asked whether the Department intended to make changes to clauses 32 and 39 to make them gender neutral. The proposed amendments to these clauses are detailed below.

The Department has identified two further amendments to be moved at Consideration Stage. Details of the proposed amendments to clause 27 and Schedule 1 are provided below, with an explanation of the need for the amendments. For convenience, a consolidated list of all proposed amendments, combining the information provided here and in my letter of 4 November, is attached as an Annex.

### **Clauses 32 and 39**

The Committee asked whether the Department intended to make changes to clauses 32 and 39 to make them gender neutral.

The Minister intends to table the following amendments at Consideration Stage.

#### **Clause 32, Page 12, Line 9**

Leave out 'chairman' and insert 'chairperson'.

#### **Clause 32, Page 12, Line 10**

Leave out 'vice-chairman' and insert 'vice-chairperson'.

### **Clause 32, Page 12, Line 12**

Leave out 'chairman or vice-chairman' and insert 'chairperson or vice-chairperson'.

### **Clause 39, Page 14, Line 28**

Leave out 'chairman' and insert 'chairperson'.

### **Clause 39, Page 14, Line 29**

Leave out 'chairman' and insert 'chairperson'.

### **Clause 27 – Rates support grant**

Clause 27(5) makes provision for regulations for calculation of the rates support grant and corresponds to the current provision in Article 4(2) of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 2002 regarding the resources element of the general grant. Regulations under these powers are subject to draft affirmative procedure. The regulations under Article 4(2) currently in operation are the Local Government (General Grant) Regulations (Northern Ireland) 2003.

Regulation 5 of the 2003 Regulations makes provision for the information needed from councils to enable the Department to calculate the amount of rates support grant payable to be supplied by way of a statutory pro forma as set out in Part III of the Schedule to those Regulations.

The pro forma cannot be changed unless a set of amending regulations is drafted, consulted on, laid in draft and approved by a resolution of the Assembly. However, the format of the pro forma can be affected by purely technical updates to accounting practices which do not affect the formula itself, the calculation of the rates support grant or the elements to be taken account of in this calculation.

The Department proposes that provision should be made in clause 27 to give the Department power to request the necessary information by determination rather than by statutory pro forma, thus avoiding the need to make these technical updates by bringing draft subordinate legislation to the Assembly.

The Minister intends to table the following amendments at Consideration Stage.

### **Clause 27, Page 9, Line 33**

Leave out lines 33 to 35.

### **Clause 27, Page 10, Line 5**

At end insert –

'(9A) A council shall give the Department such information for the purpose of the calculation mentioned in subsection (5), at such time and in such form as the Department may determine.'

## **Schedule 1 Minor and consequential amendments**

The Department has identified an additional statutory instrument which would need to be added to the Schedule of minor and consequential amendments (Schedule 1).

Schedule 4 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 refers to the definition of "chief financial officer" in section 148(1) of the Local Government Act (Northern Ireland) 1972. That definition will be repealed and replaced by clause 42 of the Bill.

The Minister intends to table the following amendment at Consideration Stage.

### **Schedule 1, Page 18, Line 18**

At end insert –

'The Deregulation and Contracting Out (Northern Ireland) Order 1996 (NI 11)

5A. In Schedule 4 (restrictions on disclosure of information), in the definition of "chief financial officer" in paragraph 7(3), for '148(1) of the Local Government Act (Northern Ireland) 1972' substitute '42 of the Local Government Finance Act (Northern Ireland) 2010'.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

**Úna Downey**

DALO

## **Local Government Finance Bill - Draft amendments for Consideration Stage**

### **Clause 24, Page 8, Line 27**

Leave out 'made subject to negative resolution'.

### **Clause 24, Page 8, Line 29**

At end insert -

'(10) An order shall not be made under subsection (9) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.'

### **Clause 27, Page 9, Line 33**

Leave out lines 33 to 35.

### **Clause 27, Page 9, Line 40**

Leave out lines 40 and 41.

**Clause 27, Page 10, Line 5**

At end insert -

'(9A) A council shall give the Department such information for the purpose of the calculation mentioned in subsection (5), at such time and in such form as the Department may determine.'

**Clause 32, Page 12, Line 9**

Leave out 'chairman' and insert 'chairperson'.

**Clause 32, Page 12, Line 10**

Leave out 'vice-chairman' and insert 'vice-chairperson'.

**Clause 32, Page 12, Line 12**

Leave out 'chairman or vice-chairman' and insert 'chairperson or vice-chairperson'.

**Clause 39, Page 14, Line 28**

Leave out 'chairman' and insert 'chairperson'.

**Clause 39, Page 14, Line 29**

Leave out 'chairman' and insert 'chairperson'.

**Clause 43, Page 16, Line 20**

At end insert -

'(2) Regulations and orders under this Act may contain such incidental, supplementary, consequential, transitory or saving provisions as the Department thinks necessary or expedient.'

**Schedule 1, Page 18, Line 18**

At end insert-

'The Deregulation and Contracting Out (Northern Ireland) Order 1996 (NI 11)

5A. In Schedule 4 (restrictions on disclosure of information), in the definition of "chief financial officer" in paragraph 7(3), for '148(1) of the Local Government Act (Northern Ireland) 1972' substitute '42 of the Local Government Finance Act (Northern Ireland) 2010'.

**Department reply re Local Government  
(Finance) Bill**





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Your reference:  
Our reference: CQ175/10

Mrs Alex McGarel  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX 8 November 2010

Dear Alex

## **Local Government Finance Bill**

Following the informal clause by clause consideration of the Bill on 21 October 2010, the Committee requested further information on a number of clauses, to enable it to move to the formal clause by clause scrutiny of the Bill (currently scheduled for 18 November).

### **Clause 14**

Will the Department introduce a power into the Bill requiring consultation on the 'national economic reasons' issue?

In the event of a national economic crisis, the Department (with the consent of the Department of Finance and Personnel) will be able to impose a blanket borrowing limit on all councils. Regulations made under clause 14(1) (i.e. for national economic reasons) are only intended for use in extreme circumstances.

Under clause 44(2), there is no requirement for the Regulations to be consulted on, the reason being that this provision is designed to be used in the event of a national economic or financial crisis when it is likely that action would need to be taken quickly. This is a power to be used as a last resort. The Department does not intend to introduce a requirement to consult on regulations under clause 14(1).

Any Regulations made under clause 14(1) would, of course, be referred to the Committee for scrutiny.

### **Clause 24**

The Committee requested sight of the Departmental amendment to this clause prior to formal clause by clause consideration.

The Minister intends to table the following amendment at Consideration Stage:

### **"Clause 24, Page 8, Line 27**

Leave out 'made subject to negative resolution'.

### **Clause 24, Page 8, Line 29**

At end insert -

'(10) An order shall not be made under subsection (9) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.'

### **Clause 27**

Members requested details about:

- (i) the formula used for setting the rates support grant;
- (ii) the process used for changing the formula; and
- (iii) whether the formula is rural proofed and subject to an equality impact assessment.

The Bill provides for the separation of the current general grant into two elements – the rates support grant and the de-rating grant. This is simply a change of name as the statutory formulae for calculating the two new grants have not been changed.

The formula to be used for setting the rates support grant is provided for in Schedule 1 to the draft Local Government (Rates Support Grant) Regulations (Northern Ireland) 2011, a copy of which has been forwarded to the Committee. This formula is exactly the same as the formula currently used for calculating the resources element of the general grant (as set out in the Schedule to the Local Government (General Grant) Regulations (Northern Ireland) 2003).

The formula for setting the rates support grant is designed to measure each council's wealth base against its needs. The grant is and will be paid only to those councils whose needs exceed their wealth. Wealth is determined by the value of property in the district. Needs is determined by adjusting the population estimate for the district, using factors based on the Northern Ireland Deprivation Measure, to address:

- socio-economic disadvantage;
- the impact of an influx of population into a district; and
- sparsity.

The overall funding available for this grant will then be shared out in proportion to the need as identified by the formula.

When the current general grant calculation was introduced in 2003 the Department carried out a full Equality Impact Assessment on the proposed formula for distribution of the resources

element of general grant. The proposal to use a weighted capitation formula was proofed for each of the nine equality categories. Measures built into the formula address relative socio-economic disadvantage. Adjustments are made to the population estimate which is provided by the Department of Finance and Personnel to take account of particular circumstances that impact on the cost of providing certain district council services. In addition the Department's Central Statistics and Research Branch carries out an equality monitoring exercise on the resources element of general grant once a year. The exercises have shown that there is no negative impact upon any specific Section 75 group.

A detailed review of the 'needs' measures of the general grant (resources element) formula, involving council representatives, a statistician and departmental officials, was completed in 2007. It made minor adjustments to the factors for community services and economic development services but the other key services, measures, factor and weighting were considered to remain fitting. A recommendation of this review has resulted in the measures, factors and weightings being assessed yearly.

When the current formula was introduced in 2003, rural proofing processes were still being developed. However, as can be seen, the formula is complex and contains a criterion on sparsity of population, which does ensure in part that rural areas are not disproportionately affected.

The process for reviewing the current formula would be extremely complex and time consuming. In 2003 the current formula was introduced after a process which took a number of years to complete. Changing the formula, for any reason, would add to the complexity, involving a detailed consultation process and changes in regulations, which would be draft affirmative. This means that the formula could not be changed unless the Assembly debated the matter. Any change in policy would incorporate a full impact assessment which would include an Equality Impact Assessment and a Rural Impact Assessment.

As part of the RPA programme, Policy Development Panel C had already started to consider if the resources element of general grant was fit for purpose for the proposed new 11 council structure. Early analysis had indicated that it may be suitable but that further modelling would be required when the new structures are settled.

## **Clause 30**

The Committee suggested the introduction of an early warning system for payments due by councils to departments etc. and Departmental officials agreed to consider this and report back to members.

This clause provides for the deductions from grants where a council owes money under a statutory provision to a Northern Ireland department or public body, to the Consolidated Fund, or to a public fund under the control of a Northern Ireland department or public body.

This clause carries forward, without amendment, the corresponding provision in section 145 of the Local Government Act (Northern Ireland) 1972 and is included in the Bill so that all local government finance provisions are consolidated into one Act.

The Department notes the Committee's suggestion and will undertake to provide notification to any council affected by the invoking of this clause as early in the process as possible. It is anticipated, however, that in a circumstance where this clause was being relied on, there would already have been significant ongoing communication between the Department(s) and council(s) involved.

## Clause 35

Members requested further information on the estimated costs of the remuneration panel, information on how the panel will be appointed and whether the panel will look at provision for training councillors.

Currently the Department determines the maximum level for each of the allowances which a councillor may receive. This has attracted criticism in the past from both the NAC and NILGA because it was perceived that the advice which the Minister received about levels of allowance may not have been sufficiently independent.

There are mechanisms for independent advice on councillors' remuneration in Great Britain. The Local Government Act 2000 provides for local authorities in England to establish and maintain an independent remuneration panel. A local authority can join with other local authorities to have a joint panel. The local authority is required to seek advice from its independent remuneration panel before it amends its scheme of allowances.

When the Scottish Executive consulted on whether there should be a national remuneration committee or local committees the majority of respondents were in favour of a national committee. This was because there are 32 councils in Scotland, each with similar powers, whereas in England there are over 400 local authorities varying in size, responsibilities and governance arrangements. The National Assembly for Wales also concluded that a national remuneration panel would be the most suitable arrangement for the 23 County and County Borough Councils in Wales.

When the Councillors' Remuneration Working Group considered the mechanism for future reviews of councillors' allowances it concluded that a single panel would be the most suitable because it would secure a common framework of allowances and equitable treatment for councillors in Northern Ireland.

When estimating the costs of the panel the Department drew on experience in Scotland and Wales.

The Independent Remuneration Panel in Wales has a chair, vice-chair and 3 members who are paid an allowance of £256, £226 and £190 per day respectively. The Scottish Local Authorities Remuneration Committee (SLARC) has a chair and 5 members who are paid an allowance of £200 and £160 per meeting respectively.

The estimated time commitment for a complete review of the framework and level of councillors' allowances would be 2–3 meetings per month for a 12 month period. Based on a three person panel paid at a similar level to the Independent Remuneration Panel in Wales, meeting three times per month for a twelve month period the total annual cost (excluding any travel costs) would be £22,896. If the Northern Ireland Panel was paid at a similar level to SLARC the cost for a three person panel meeting 3 times a month for a twelve month period would be £18,720.

A more limited review (ie targeted to particular aspects of councillors' remuneration) would probably require one meeting per month over, at most, a 12 month period.

The Department intends to use the public appointments procedure for the appointment of the chair and members of the panel. The public appointments process was also used to appoint the Independent Remuneration Panel in Wales and SLARC.

It will be for the Minister to decide if he wishes the panel to consider and make recommendations about training for councillors. SLARC considered training as part of its first report and its recommendation that all councillors should have a role description, participate in a training needs assessment and have a personal development plan in place when they are in receipt of the new remuneration package was accepted by Scottish Ministers.

The functions of councils in Scotland and Wales are wider than those of councils in Northern Ireland and this is reflected in the level of remuneration paid to councillors. In Wales a basic allowance of £13,868 is paid and in Scotland councillors receive a salary (equivalent to the basic allowance) of £16,234. There are also differences in the system for special responsibility allowances (senior councillors' salary in Scotland) and travel and subsistence arrangements in the three jurisdictions. It would not, therefore, be feasible to use the recommendations of either SLARC or the Independent Remuneration Panel for Wales for councillors' allowances in Northern Ireland.

## **Clause 36**

The Committee requested further information in relation to a non-councillor receiving expenses.

Clause 36 of the Bill extends the definition of the term "councillor" to include an officer of the council for the purposes of clause 34(1).

Clause 34(1) allows a council to make payments towards expenses incurred in respect of attendance authorised by the council at conferences and meetings which, in the opinion of the council, relate to the interests of the district or any part of it, or the interests of the inhabitants of the district or any part of it. Examples of such conferences or meetings would include events dealing with matters such as town-twinning, or the promotion of economic development, community development or tourism in the district of the council. On such occasions, a council might authorise attendance by non-councillors on account of their professional or technical expertise, or as representatives for external stakeholders such as the local community, or the business and voluntary sector.

Clause 34 repeals and replaces section 38 of the Local Government Act (Northern Ireland) 1972, which already allows a council to make payments in respect of expenses incurred by officers, as well as councillors and members of committees or sub-committees who are not councillors, in attending conferences and meetings.

There is no change to the policy already in operation.

## **Clause 41**

Members requested a list of the professional bodies of which council officials are current members.

The Department wrote to all councils asking for a list of the professional bodies of which council officials are current members.

The Department has received replies from 10 of the 26 councils, producing a composite list of 91 bodies. The information provided by councils to the Department is attached as an Annex to this letter. Many of the bodies named in the Annex were common to all of the councils that had replied, while there were some bodies that were mentioned only once by individual councils. Although the Annex shows all of the bodies named by councils, not all of these bodies would fall within the definition of a qualifying body given in clause 41(4).

Committee members may wish to note that many professional bodies administer formal schemes of continuing professional development, which members are obliged to follow if they wish to retain their accreditation and continue with their professional practice. For example, there are statutory requirements, set out in the Solicitors (Northern Ireland) Order 1976, for solicitors to hold a practising certificate issued by the Law Society of Northern Ireland. If a council were to appoint a solicitor as one of its officers to provide legal advice to the council, that officer would not be able to fulfil that function without the necessary practising certificate which, in turn, requires membership of the Law Society.

Committee members may also wish to note that membership of certain of the bodies in the list has been specified, in regulations made by the Department, as among the range of qualifications to be held by Clerks of councils, and as required qualifications for Chief Building Control Officers.

The professional bodies on the list specific to the position of Clerk are:

- Association of Certified Accountants;
- Chartered Institute of Public Finance and Accountancy;
- Chartered Institute of Secretaries and Administrators;
- Institute of Chartered Accountants in Ireland; and
- Institute of Chartered Accountants in England and Wales.

The professional bodies specific to the position of Chief Building Control Officer are:

- Institution of Civil Engineers;
- Institution of Structural Engineers;
- Royal Institute of British Architects; and
- Royal Institution of Chartered Surveyors (building sub-division).

Regulations also provide that a barrister-at-law or a solicitor would be eligible for appointment as Clerk: membership of the Law Society of Northern Ireland is implied.

## **Social clauses**

Departmental officials agreed to provide the Committee with more information on the ongoing work in relation to the inclusion of social clauses in the Bill; it was indicated that a proposal for secondary legislation may be forthcoming and the Committee look forward to early receipt of this.

## **Background**

Councils are currently prevented from including social or community clauses in their contracts because of a particular restriction imposed on them by the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992. That Order imposes a number of restrictions on councils when they exercise functions in relation to contracts.

The 1992 Order also required NI councils to subject certain of their activities to competitive tendering and, at the same time, listed a number of "non-commercial considerations" which councils were excluded from considering as part of their tendering procedures. One of those non-commercial considerations is the terms and conditions of employment that exist between

contractors and their workforces. That restriction effectively prevents councils from including social clauses in their contracts.

Provision exists, however, in the Local Government (Best Value) Act (Northern Ireland) 2002 to enable the Department to make subordinate legislation to remove such restrictions for specified purposes. The Best Value Act 2002 revoked the competitive tendering requirements in the 1992 Order and introduced a duty of Best Value on councils. The 2002 Act also introduced a provision to enable the Department to make an order, subject to affirmative resolution, specifying matters which would cease to be non-commercial considerations for procurement purposes, and to issue guidance to councils regarding the order. To date, the Department has not exercised its order-making power.

## **Recent Developments**

During the past year, several local government representatives have written to the Minister to ask that legislation be made to enable councils to include social clauses in their contracts.

In response, the Minister advised that he would ask officials to look into this but, bearing in mind the Department's significant programme of legislation, he could not give a date by which the necessary legislation would be made.

However, we have been making progress on this issue and in response to a recent request for an update on social clauses the Minister indicated that the necessary legislation had been drafted and that officials were working with colleagues in DFP on the supporting guidance to accompany the legislation. He also indicated that the Department was proposing to go out to public consultation on the legislation and guidance in the New Year.

While the Local Government Finance Bill could be amended to give councils the necessary powers, it may not be the most appropriate choice of legislative vehicle as the subject matter does not concern local government finance or payments to or from councils. Also, the Department has not consulted on the matter.

In any case, the inclusion of the necessary powers in the Finance Bill would not hasten their commencement as the Department proposes to issue associated guidance and councils will expect to be consulted about it.

Although the legislation will not be in place during the life of this Assembly (as it is draft affirmative procedure) we would be in a position, following the election, to seek permission from the new Environment Minister to have the draft order introduced early in the first term of the new Assembly.

A copy of the SL1 for the Local Government Best Value (Exclusion of Non-Commercial Considerations) (Northern Ireland) Order 2011 is attached. The Department will, of course, send copies of the legislation and guidance to the Committee before going out to consultation.

The proposed legislation is not a carte blanche provision for councils to use and they will need to ensure that the inclusion of any proposed social clauses in their contracts is in compliance with EC Treaty principles on procurement and the UK Public Procurement Regulations 2006.

## **Additional Matters**

### **Pension Provision for Councillors**

At the Committee meeting of 21 October the issue of pension provisions for councillors was raised and officials indicated that the Department was working on the necessary regulations to allow councillors to join the Local Government Pension Scheme. A copy of the SL1 for the proposed Local Government Pension Scheme (Councillors) (Amendment) Regulations (Northern Ireland) 2011 is attached. The Department will, of course, send copies of the legislation to the Committee before going out to consultation.

## **Additional amendments to be tabled at Consideration Stage**

It is usual to take a power in a Bill to allow any regulations or orders to be made under the Bill to include such incidental, supplementary, consequential, transitory or saving provisions as may be considered expedient or necessary. Although such provision was made in relation to regulations made under Clause 27, it was noticed that no such provision was included for any other regulations to be made under the Bill.

The Minister therefore intends to table an amendment to Clause 43 at Consideration Stage and this, in turn, will require a consequential amendment to be made to Clause 27.

Clause 43, Page 16, Line 20

At end insert -

'(2) Regulations and orders under this Act may contain such incidental, supplementary, consequential, transitory or saving provisions as the Department thinks necessary or expedient.'

Clause 27, Page 9, Line 40

Leave out lines 40 and 41.

I trust this information is of assistance. Should you require anything further please contact me directly.

Yours sincerely,

**Úna Downey**

DALO

## **Annex**

### **Local Government Finance Bill**

#### **Information provided by councils on the professional bodies of which their officers are members**

- Association of Chartered Certified Accountants
- Association of Accounting Technicians
- Association for Petroleum and Explosives Administration
- Association for Public Service Excellence



- Arts Marketing Association
- Association of Building Engineers
- Belfast Solicitors Association
- British Computer Society
- British Psychological Society
- British Institute of Facilities Management
- Certified Internet Webmaster (as a design specialist)
- Chartered Institute of Arbitrators
- Chartered Institute of Architectural Technologists
- Chartered Institute of Building
- Chartered Institute of Environmental Health
- Chartered Institute of Logistics and Transport (UK)
- Chartered Institute of Management Accountants
- Chartered Institute of Marketing
- Chartered Institute of Personnel and Development
- Chartered Institute of Public Finance and Accountancy
- Chartered institute of Public Relations
- Chartered Institute of Purchasing and Supply
- Chartered Institute of Taxation
- Chartered Institute of Water Management
- Chartered Institution of Building Services Engineers
- Chartered Institution of Wastes Management
- Chartered Institution of Water and Environmental Management
- Chartered Insurance Institute
- Chartered Management Institute
- Emergency Planning Society
- Engineering Council
- Engineers Ireland
- Environmental Protection UK
- European Logistics Association
- FITPRO (Fitness Professionals Ltd)
- Freight Transport Association
- Information Commissioner's Office
- Institute for the Management of Information Systems
- Institute for Public Relations

- Institute for Sport, Parks and Leisure
- Institute of Acoustics
- Institute of Administrative Management
- Institute of Business Consulting
- Institute of Cemetery and Crematorium Management
- Institute of Chartered Accountants in England and Wales
- Institute of Chartered Accountants in Ireland
- Institute of Chartered Foresters
- Institute of Chartered Secretaries and Administrators
- Institute of Directors
- Institute of Ecology and Environment Management
- Institute of Environmental Management & Assessment
- Institute of Groundsmanship
- Institute of Hospitality Management
- Institute of Internal Auditors
- Institute of IT Training
- Institute of Leisure and Amenity Management
- Institute of Licensing
- Institute of the Motor Industry
- Institute of Occupational Safety and Health
- Institute of Road Transport Engineers
- Institute of Sport and Recreation Management
- Institution of Structural Engineers
- Institution of Civil Engineers
- Institution of Engineering and Technology
- Institution of Environmental Scientists
- Institution of Mechanical Engineers
- International Register of Certified Auditors
- Irish Museums Association
  
- Landscape Institute
- Law Society of Northern Ireland
- Life and Business Coaching Association of Ireland
- Local Authority Recycling Advisory Committee
  
- Marketing Institute of Ireland
- Microsoft (as a Microsoft Certified Professional)
  
- National Association of Civic Officers

- Northern Ireland Local Government Association
- Oil Firing Technical Association
- Public Risk Management Association (ALARM)
- Register of Exercise Professionals
- Royal Institute of British Architects
- Royal Institution of Chartered Surveyors
- Royal Society for Public Health
- Royal Town Planning Institute
- Security Industry Authority
- Society for the Environment
- Society of Automobile Engineers
- Society of Information Technology Management
- Society of Local Authority Chief Executives
- Society of Operations Engineers
- Sports Turf Research Institute
- Technical Advisors Group, Inc.

## **Draft Guidance on Local Government Investments for District Councils in Northern Ireland 2011**

### **Annex G**

#### **Draft Guidance on Local Government Investments For District Councils In Northern Ireland**

##### **Background**

As part of the introduction of the new prudential capital finance system, the Department has issued this guidance on local government investments. Part 1 of this document gives informal advice only and is not part of the guidance itself, which is contained in Part 2.

Under the new prudential system, the onus is on councils to act prudently with regard to their investment and treasury management strategies. Elected members will need to be aware of this and be prepared to accept the consequences of their decisions.

Section 23 of the Local Government Finance Act (Northern Ireland) 2011 gives councils the power to invest for "any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs". The reference to the "prudent management of its financial affairs" is included to cover investments which are not directly linked to identifiable statutory functions but are simply made in the course of treasury management. This would also allow the temporary investment of funds borrowed for the purpose of expenditure in the reasonably near future; however, the speculative procedure of borrowing

purely in order to invest remains unlawful. The Chartered Institute of Public Finance and Accountancy's (CIPFA) "Prudential Code for Capital Finance in Local Authorities" also states that councils should not borrow in advance of their need to profit from investment of the extra sums borrowed (paragraph 80).

## **Application**

The guidance becomes operative on 1 April 2011.

## **PART 1**

### **INFORMAL COMMENTARY ON THE INVESTMENTS GUIDANCE**

[References to paragraphs in the formal guidance are in square brackets]

#### **Guidance and Codes of Practice**

1. Two codes of practice issued by the Chartered Institute of Public Finance and Accountancy (CIPFA) contain investment guidance which complements the Departmental guidance. These publications are:

- Treasury Management in the Public Services: Code of Practice and Cross Sectoral Guidance Notes. This CIPFA Code covers the whole range of treasury management issues, including the basic fundamental principles for making and managing investments and
- The Prudential Code for Capital Finance in Local Authorities.

2. Councils are required to have regard to the current editions of the CIPFA codes by regulations 7 and 19 of the Local Government (Capital Finance and Accounting) (Northern Ireland) Regulations 2011, No. ??

3. The Local Government Finance Act (Northern Ireland) 2011, section 25(1), requires a council to "...have regard (a) to such guidance as the Department may issue, and (b) to such other guidance as regulations may specify ....."

4. The guidance in Part 2 of this document is issued under the power in section 25(1) of the 2011 Act and councils are therefore required to have regard to it. It does not duplicate the material covered in the CIPFA Code but builds upon it and supplements it as necessary.

#### **Application [3.1]**

5. This guidance applies with effect from 1 April 2011 – ie to the financial year 2011 – 2012 and subsequent years. The guidance applies to all district councils in Northern Ireland. It does not apply to pension and trust funds which are covered by a completely separate regulatory regime.

#### **Annual Investment Strategy [4.1 – 4.7]**

6. The preparation each year of an Investment Strategy is central to the guidance [4.1]. It encourages the formulation of policies for the prudent investment of the funds that councils hold on behalf of their ratepayers. In addition, the need for the Strategy to be approved by the full council ensures that these policies are subject to the scrutiny of elected Members.

7. The guidance defines a prudent investment policy as having two objectives: achieving first of all security (protecting the capital sum from loss) and then liquidity (keeping the money readily available for expenditure when needed) [4.2]. The generation of investment income is distinct from these prudential objectives and is accordingly not a matter for the guidance. However, that does not mean that councils are recommended to ignore such potential revenues. Once proper levels of security and liquidity are determined, it will then be reasonable to consider what yield can be obtained consistent with those priorities. This widely-recognised investment policy is sometimes more informally and memorably expressed as follows:

#### Security – Liquidity – Yield

8. The guidance recommends that an Investment Strategy should be prepared and approved before the start of each financial year [4.5]. However, this need not be a once-a-year event, as the initial Strategy may be replaced by a revised Strategy, at any time during the year, on one or more occasions, subject to full council approval [4.6]. The initial Strategy may specify a firm timetable for the production of in- year Strategies, or may identify contingencies in the event of which a revised Strategy is to be prepared (for example, significant changes in the risk assessment of a significant proportion of the council's investments). However, a revised Strategy may be prepared even if it was not foreshadowed in that way. Generally, if there are investment issues which the full council might wish to have brought to their attention, submission of a revised Strategy should always be considered. The CIPFA Treasury Management Code contains guidance on reporting requirements.

9. It should however be possible to incorporate in the Strategy sufficient flexibilities and delegations to avoid the need for a formal submission to the full council being triggered by purely technical circumstances. It is also open to councils to arrange for in-depth scrutiny of Strategies to be undertaken outside full council meetings, with a view to informing and expediting the formal consideration by full council. Where external investment managers are used, they should be contractually required to comply with Strategies.

10. As noted above, district councils will also need to have regard to the CIPFA Treasury Management Code, which contains guidance on reporting requirements. There is no intention to require councils to duplicate any of the tasks specified in the CIPFA Treasury Management Code. It is open to councils to consider whether a single document might conveniently be used to cover both the requirements of the CIPFA code and the Department's guidance. However, in that case the document should state explicitly where it relates to the guidance by the Department.

11. Publication of Strategies is now formally recommended [4.7]. Publication on the council's website is satisfactory. This does not mean that commercially confidential material such as detailed counterparty lists should be published.

### **Investment Security [5.1 – 5.3]**

12. The idea of specified investments [5.1] is to identify options with relatively high security and high liquidity, to which councils need make only minimal reference in their Strategies. All such investments must be in sterling and with a maturity of no more than a year. Such investments with the UK Government, a local authority in GB or a district council, will count as specified investments. In addition, such investments with bodies or investment schemes with "high" credit ratings will count as specified investments. However the Annual Investment Strategy will first need to define this term for broad categories of investment. For example, it might say that for money market funds, "high" means a rating of AAA, while for UK banks and building societies it means a rating of AA. The Strategy will need to state how frequently ratings are to be monitored. When making a major one-off investment, it would clearly be important to check the rating as closely as possible to the time when funds are to be committed. Where investments are

being made very frequently with a particular institution, it may not be practicable to look at the rating before each individual transaction, but ratings should still be monitored regularly and the Strategy should give guidelines on the timing and procedure.

13. The Strategy should deal in more detail with non-specified investments [5.3], given the different levels of potential risk. There is no intention of discouraging councils from pursuing these options, but the aim is to ensure that proper procedures are in place for assessing and mitigating risk. Therefore the Strategy should identify the types of such investments that may be used during the course of the year and should set a limit to the amounts that may be held in such investments at any time in the year. The limit may be a sum of money or a percentage of total investments or both. The Strategy should also lay down guidelines for making decisions on such investments, for example, on the circumstances in which professional advice is to be sought. Again, if the criteria mentioned refer to credit ratings, the recommendations in paragraph [6.1] of the guidance should be followed.

## **Investment Risk [6.1 – 6.4]**

14. This section in the guidance addresses issues relating to credit risk and the means of assessing it.

### **Risk assessment [6.1]**

15. Underlying these recommendations is a concern that credit ratings should not be seen as the only means of assessing creditworthiness. The Strategy is therefore to indicate the extent to which the council's assessment of credit risk depends upon the use of credit ratings. Where they are used, the Strategy is to say how frequently ratings are monitored and what action is to be taken when they change. The Strategy is also to say what other sources of information on credit risk are used; that is particularly important if a favoured investment option has a low credit rating or is not rated at all. It is not appropriate for the Department to offer guidance on such alternative means of assessing credit risk.

### **Treasury management advisers [6.2]**

16. Sources of information on credit risk may include private-sector treasury management advisers. The Strategy is to make clear how the council uses such advisers and what measures are in place to maintain an appropriate quality of service. The ultimate aim here is to encourage a constructive and transparent partnership between these contractors and their local government clients.

### **Investment training [6.3]**

17. The Strategy is to report on the procedures for reviewing and addressing the needs of the council's finance officers for training in investment management. Even where significant reliance is placed upon external advisers, in-house expertise will still be needed to develop the proper kind of working relationship with them. Where elected members are involved in treasury management issues it is suggested they should also avail themselves of relevant training wherever possible. Further guidance on training issues is given in the CIPFA Treasury Management Code. Investment of money borrowed in advance of need [6.4]

18. Section 23 of the Local Government Finance (Northern Ireland) Act gives councils power to invest for "any purpose relevant to its functions under any statutory provision, or for the purposes of the prudent management of its financial affairs". The Department cannot offer an authoritative interpretation of the law, but takes the informal view that, while the speculative

procedure of borrowing purely to invest at a profit is unlawful, there appears to be no legal obstacle to the temporary investment of funds borrowed for the purpose of expenditure in the reasonably near future. CIPFA's Prudential Code for Capital Finance in Local Authorities makes recommendations about this procedure in the context of prudent borrowing practice. To complement that, this guidance recommends that the Strategy reports the council's policies relating to the investment of any sums borrowed in advance.

The Department considers that elected Members should have an opportunity to scrutinise this aspect of their council's investment practices, given that it may expose more money than is strictly necessary to investment risk.

## **Investment Liquidity [7.1]**

19. The Strategy should set out procedures for determining the maximum periods for which funds may prudently be committed. This is to ensure that the council has properly assessed the risk of not having immediate access to some of its funds. An investment should be regarded as commencing on the date the commitment to invest is entered into, rather than the date on which the funds are paid over to the counterparty.

## **[PART 2]**

### **Department of the Environment**

#### **GUIDANCE ON LOCAL GOVERNMENT INVESTMENTS**

Issued under section 25(1) of the Local Government (Finance) Act (Northern Ireland) 2011 and effective from 1 April 2011

#### **(1) Power Under Which the Guidance is Issued**

1.1 The following guidance is issued by the Department under section 25(1) of the Local Government (Finance) Act (Northern Ireland) 2011.

#### **(2) Definitions of Terms**

2.1 In this guidance, 2011 Act means the Local Government (Finance) Act (Northern Ireland) 2011.

2.2 An investment is a transaction which relies upon the power in section 23 of the 2011 Act and is recorded in the balance sheet under the heading of investments within current assets or long-term investments. The term does not include pension fund and trust fund investments, which are subject to separate regulatory regimes and are therefore not covered by this guidance.

2.3 A long-term investment is any investment other than (a) one which is due to be repaid within 12 months of the date on which the investment was made or (b) one which the council may require to be repaid or redeemed within that 12 month period.

2.4 A credit rating agency is one of the following three companies: Standard and Poor's; Moody's Investors Service Ltd; or Fitch Ratings Ltd.

### **(3) Application**

#### **Effective date**

3.1 This guidance applies to all district councils in Northern Ireland with effect from 1 April 2011.

### **(4) Investment Strategy**

#### **Preparation**

4.1 The Department recommends that for each financial year a council should prepare an investment Strategy ("the Strategy") in accordance with the timetable in paragraphs 4.5 and 4.6.

4.2 The Strategy should set out the council's policies for the prudent management of its investments and for giving priority, firstly, to the security of those investments and, secondly, to their liquidity. It should therefore identify the procedures for monitoring, assessing and mitigating the risk of loss of invested sums and for ensuring that such sums are readily accessible for expenditure whenever needed.

4.3 The detailed contents of Strategy should be in accordance with paragraphs 5.1 to 7.1, but may include other matters considered relevant.

#### **Approval**

4.4 The Strategy, be it an initial or any revised strategy should be approved by the full council.

#### **Timing**

4.5 The Department recommends that for any financial year an investment Strategy ("the initial Strategy") should be prepared and approved before the start of that year.

4.6 The initial Strategy may be replaced by another Strategy ("the revised strategy") at any time during the year, on one or more occasions, subject to the same process of approval. The initial Strategy should specify circumstances in which a revised Strategy is to be prepared. A revised Strategy may be prepared in other circumstances, if at any time it is considered appropriate.

4.7 The Department recommends that the initial Strategy and any revised Strategy should, when approved, be made available to the public free of charge, in print or online.

### **(5) Investment Security**

#### **Specified investments**

5.1 An investment is a specified investment if it satisfies the condition below:

(a) the investment is denominated in sterling and any payments or repayments in respect of the investment are payable only in sterling;

(b) the investment is not a long-term investment (as defined in paragraph 2.3);



(c) the investment does not involve the acquisition of share capital or loan capital in any body corporate as set out in regulation 12 of the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) Regulations 2011;

(d) the investment is made with a body or in an investment scheme of high credit rating (see paragraph 5.2); or with one of the following public-sector bodies;

(i) the United Kingdom Government;

(ii) a district council: or

(iii) or a local authority in England or Wales (as defined in section 23 of the 2003 Act) or a similar body in Scotland;

(e) the principal sum to be repaid at maturity is the same as the initial sum invested other than investments in the UK Government.

5.2 For the purposes of paragraph 5.1(d) the Department recommends that the annual Investment Strategy should:

- define high credit rating for the category of investments which the council intends to use in the financial year; and
- monitor the credit arrangements and state what action is to be taken when ratings change.

## **Non-specified investments**

5.3 With regard to non-specified investments (ie those not meeting the definition in paragraph 5.1), the Department recommends that the Strategy should:

(a) set out procedures for determining which categories of such investments may prudently be used (and where these procedures involves the use of credit ratings, paragraph 6.1 is relevant);

(b) identify which categories of such investments have so far been identified as prudent for use during the financial year; and

(c) state the upper limits for the amounts which, at any time during the financial year, may be held in each identified category and for the overall amount which may be held in non-specified investments (the limits being defined by reference to a sum of money or a percentage of the council's overall investments or both).

## **(6) Investment Risk**

### **Risk assessment**

6.1 The Department recommends that the Strategy should state the council's approach to assessing the risk of loss of investments, making clear in particular:

(a) to what extent, if any, risk assessment is based upon credit ratings issued by one or more credit rating agencies;

(b) where credit ratings are used, how frequently credit ratings are monitored and what action is to be taken when ratings change; and

(c) what other sources of information on credit risk are used, additional to or instead of credit ratings.

## **Treasury management advisers**

6.2 The Department recommends that the Strategy should state:

(a) whether and, if so, how the council uses external advisers offering information, advice or assistance relating to investment; and

(b) how the council monitors and maintains the quality of any such service.

## **Investment training**

6.3 The Department recommends that the Strategy should state what process is adopted for reviewing and addressing the needs of the council's finance officers for training in investment management.

## **Investment of money borrowed in advance of need**

6.4 The Department recommends that the Strategy should state the council's policies on investing money borrowed in advance of spending needs. This statement should identify any measures to manage the amount of such investments, including any limits on (a) amounts borrowed and (b) periods between borrowing and expenditure. The statement should also comment on the management of the risks involved, including balancing the risk of investment loss against the risk of higher interest rates if borrowing is deferred.

## **(7) Investment Liquidity**

7.1 The Department recommends that the Strategy should set out procedures for determining the maximum periods for which funds may prudently be committed.

# **Association of Local Government Finance Officers information on Local Government (Finance) Bill**

## **Association of Local Government Finance Officers (NI)**

Our Ref. JC/GOK

Mr Nathan McVeigh  
Clerical Supervisor  
Committee for the Environment  
Room 247  
Parliament Buildings  
Stormont Estate  
BELFAST BT4 3XX 19 October 2010

Dear Nathan

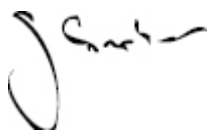
## **Draft Local Government (Finance) Bill**

I refer to your email dated 21 September 2010, sent on behalf of the Environment Committee, inviting the Association of Local Government Finance Officers (ALGFO) to provide additional information on the General Grant (Resources Element) .

I enclose ALGFO Paper for the Committee's consideration, which has been endorsed by both NILGA and SOLACE.

If you require further clarification, please do not hesitate to contact me.

Yours sincerely



Chairman

## **General Grant (Resources Element) – Case for Ring Fencing**

### **1.0 Introduction**

Following ALGFO 's briefing to the Environment Committee on Thursday 16 September 2010 on the New Local Government (Finance) Bill the Committee has asked if ALGFO wished to provide any additional information on the Bill particularly in relation to why ALGFO believe that the General Grant (Resources Element) should be ring fenced.

### **2.0 Background**

By way of background the Local Government &c (Northern Ireland) order 1972, Articles 3, 4, 5 and Schedule 1, makes provision for payment and distribution of the General Exchequer Grant to district councils.

There are two elements of grant, namely:-

- A derating element, to compensate district councils for loss of rate income due to the statutory derating of certain properties; and
- A resources element, to provide additional finance to those district councils whose total rateable value, per head of population, falls below a standard determined by the Department.

### **3.0 Policy Objectives**

The resources element of general grant is distributed by applying a statutory formula to the baseline resources provided by DOE in accordance with the following policy objectives:

- To provide additional resources for those district councils in greatest need whose gross penny rate product, per adjusted head of population, falls below the Northern Ireland average.
- To target social need by incorporating into the formula, factors which take account of socio-economic disadvantage.

#### **4.0 Statutory Formula**

The components used in the statutory formula are Council's gross penny product and population. Wealth is determined by the gross penny product of a District Council, relative to the Northern Ireland gross penny product. The formula takes into account expenditure incurred on 5 key services i.e. community services, economic development, tourism, other cleaning and waste collection, which is used to address additional needs and adjust for deprivation, the influx of additional population and sparsity throughout District Councils. In 2005/06 this adjustment represented 35.42% of District Councils' total net expenditure.

ALGFO, as provided in oral evidence to the Environment Committee on 16 September 2010, are content with the present statutory formula but would advocate that the statutory formula for the rates support grant needs to be reviewed post RPA to confirm that it continues to meet its objectives, especially in light of the establishment of new local authorities with new functions and functions that will transfer from central to local government.

#### **5.0 Baseline Resources Provided by DOE**

Up to 2009/10 the resources element of General Grant for distribution to qualifying Councils was £20,497,000 and had remained in and around this baseline for many years.

For the 2010/11 financial year, 18 Councils qualified for resources grant. Before cuts this ranged from a resources grant of almost £2 million to the Council who qualified for the largest allocation to £125,000 to the Council who qualified for the lowest allocation.

Prior to the striking of the rates estimates for 2010/11, Councils were advised on 10 December 2009, that the resources grant would be cut by £1 million (4.9%) to £19,497,000. On 23 July 2010, Councils were further advised of an In Year cut of £1,150,000 (5.9%) reducing the total resources grant available to £18,347,000.

Therefore, since December 2009, the baseline resources have been cut by £2,150,000 (10.8%). By top slicing the budget in this way, the Council with the greatest need for resources grant is faced with the greatest cut. Very worryingly, the Minister has more recently advised that due to severe financial challenges facing the Department of the Environment, he cannot rule out a further In Year cut or cuts for future years.

ALGFO would strongly contend that any cuts to resources grant is contrary to the policy objectives outlined in Section 3.0 and should therefore be subject to equality impact assessment and rural proofing. Attached as Appendix A is a joint paper by SOLACE and ALGFO, which shows the devastating impact that reduced resources grant (and also derating grant) would have for individual Councils. For example, if resources grant was removed entirely, the Council who currently qualifies for the highest award would lose in the region of £2 million and would be forced to increase its district rate by some 25%.

#### **6.0 Recommendation to Ring-fence Resources Grant**

ALGFO, as provided in oral evidence to the Environment Committee on 16 September 2010, would strongly contend that the resources grant (rates support grant in the New Finance Bill) needs to be adequately resourced and ring-fenced to prevent cuts such as those outlined above, which have been incurred this year. We are very concerned by the cumulative cut to date of 11% in the baseline resources.

It must be emphasised that resources grant is not provided for expenditure needs but is aimed at compensating those Councils whose gross penny product, i.e. wealth, falls below the Northern Ireland average. Therefore, if it is not ring-fenced and continues to be cut,

then those Councils who are in receipt of resources grant will become poorer and will very likely be forced to increase their district rate, putting their ratepayers at a distinct disadvantage in comparison to other areas of Northern Ireland.

Furthermore, it should be highlighted that the poorer Councils are the least able to offset the fall in income from income generating services such as Building Control which have been severely affected by the current economic downturn.

**Joe Campbell**

ALGFO Chairperson  
19th October 2010

Appendix A						
Model demonstrates the increase to existing district rates if there was a reduction in General Grant only For illustrative purposes only						
MODEL 1 Resources Grant phased out over three years						
MODEL 2 Resources Grant and Derating grant phased out over three years						
Calculated assuming that the balance of reserves applied in 2010/11 applies in subsequent years						
General Grant Modelling	MODEL 1			MODEL 2		
	2011/12	2012/13	2013/14	2011/12	2012/13	2013/14
Antrim	0.00%	0.00%	0.00%	2.03%	4.05%	6.08%
Ards	1.73%	3.48%	5.18%	2.96%	5.93%	8.89%
Armagh	3.71%	7.42%	11.13%	5.34%	10.68%	16.03%
Ballymena	0.00%	0.00%	0.00%	2.16%	4.32%	6.47%
Ballymoney	6.02%	12.04%	18.06%	7.66%	15.32%	22.98%
Banbridge	3.32%	6.65%	9.97%	4.76%	9.52%	14.28%
Belfast	0.00%	0.00%	0.00%	1.17%	2.33%	3.50%
Carrickfergus	1.96%	3.91%	5.87%	3.77%	7.53%	11.30%
Castlereagh	0.00%	0.00%	0.00%	1.72%	3.44%	5.16%
Coleborne	0.00%	0.00%	0.00%	1.26%	2.53%	3.79%
Cookstown	2.94%	5.88%	8.82%	6.83%	13.66%	20.48%
Craigavon	1.45%	2.90%	4.35%	4.66%	9.33%	13.99%
Derry	1.40%	2.81%	4.21%	2.65%	5.30%	7.95%
Down	3.00%	5.99%	8.99%	4.01%	8.02%	12.03%
Dungannon	3.23%	6.46%	9.69%	8.60%	17.20%	25.80%
Fermanagh	3.31%	6.62%	9.93%	5.84%	11.68%	17.53%
Larne	0.44%	0.87%	1.31%	2.16%	4.32%	6.47%
Limavady	6.00%	12.00%	18.00%	6.75%	13.50%	20.25%
Lisburn	0.00%	0.00%	0.00%	2.36%	4.71%	7.07%
Magherafelt	5.38%	10.73%	16.09%	6.72%	13.45%	20.17%
Moyle	3.73%	7.46%	11.19%	5.04%	10.09%	15.13%
Newry & Mourne	2.47%	4.93%	7.40%	4.20%	8.39%	12.59%
Newtownabbey	0.00%	0.00%	0.00%	1.95%	3.90%	5.85%
North Down	0.00%	0.00%	0.00%	0.89%	1.78%	2.67%
Omagh	3.84%	7.69%	11.53%	5.35%	10.71%	16.06%
Strabane	6.65%	13.29%	19.94%	9.97%	19.95%	29.92%

2010/2011 DISTRICT COUNCIL RATES (DOMESTIC AND NON DOMESTIC)

TABLE 1

CALCULATION OF AVERAGE DISTRICT COUNCIL RATES

District	Net Expenditure	Resources General Grant	Derating General Grant	Balance Applied (+/-)	Net Amount To Be Raised	1p Product	Non-Domestic Rate	Conversion Factor	Domestic Rate
Antrim	18,443,836	0	1,034,215	-400,000	17,039,631	632,760	26.9813	0.013236	0.3565
Ards	17,964,170	835,128	596,841	-424,284	18,107,949	723,600	22.2810	0.012113	0.2895
Armagh	16,773,931	1,567,840	600,262	-425,000	14,096,709	489,600	28.7900	0.013476	0.3878
Ballymena	19,943,058	0	1,212,474	0	18,730,584	723,610	26.8946	0.013814	0.3576
Ballymoney	7,030,584	1,050,587	281,000	0	8,111,017	220,480	25.9522	0.012883	0.3028
Banbridge	11,457,326	1,037,837	448,244	-80,000	12,406,424	408,260	25.6152	0.013283	0.3406
Belfast	124,985,382	0	4,372,478	4,484,975	125,077,861	4,888,730	28.5848	0.011449	0.3329
Carrickfergus	11,340,033	681,686	537,334	-318,000	9,905,193	371,630	28.5531	0.013877	0.3845
Castlereagh	14,887,021	0	684,094	-780,000	13,262,937	810,180	16.3102	0.012524	0.1960
Coleborne	17,302,944	0	632,030	0	16,670,914	144,800	22.3804	0.013181	0.2952
Cookstown	8,445,043	618,202	817,610	0	7,009,271	525,180	21.5893	0.012863	0.2730
Craigavon	26,860,847	988,275	2,144,037	-620,000	29,253,099	947,480	23.4874	0.015527	0.3647
Derry	36,736,630	1,370,642	1,407,684	-434,474	37,029,000	1,200,880	27.0809	0.014438	0.3918
Down	18,488,410	1,445,676	467,918	-458,000	19,078,178	634,160	25.3514	0.013238	0.3360
Dungannon	12,367,461	997,898	1,283,310	-800,000	9,828,388	472,080	20.2161	0.012212	0.2942
Fermanagh	13,324,880	1,129,318	561,621	0	11,337,379	639,330	17.7340	0.013804	0.2448
Larne	8,284,679	111,736	443,082	0	8,541,806	365,510	23.3898	0.014763	0.3440
Limavady	8,030,316	1,318,671	186,002	-230,000	7,324,722	285,266	27.5182	0.014826	0.4034
Lisburn	29,493,480	0	1,708,572	-600,000	24,181,898	1,308,740	18.4770	0.013106	0.2421
Magherafelt	4,267,343	1,108,458	634,746	0	5,881,030	342,470	20.1282	0.012921	0.2541
Moyle	3,574,870	510,440	175,583	-324,000	4,965,137	180,070	30.3807	0.012336	0.3749
Newry & Mourne	25,227,439	1,885,629	1,154,875	40,000	25,442,176	860,840	23.3873	0.013870	0.3167
Newtownabbey	26,872,682	0	1,374,603	-811,000	25,487,089	837,630	25.0494	0.012663	0.3207
North Down	21,728,900	0	560,180	-781,300	20,987,432	1,089,580	19.3071	0.013611	0.2876
Omagh	13,812,818	1,377,070	540,751	-48,000	11,641,779	630,700	22.5142	0.016294	0.3859
Strabane	6,822,572	1,873,352	287,322	-440,824	7,221,094	302,150	23.0190	0.014695	0.3508
TOTAL	630,378,882	16,487,000	24,908,486	-2,378,377	463,984,000	20,483,000	23.6442	0.013210	0.3123

## Northern Ireland Local Government Association information on the General Grant

The Environment Committee has asked NILGA for the following information on the General Grant (resources element);

- When in the year do councils usually find out what grant they are getting?
- How are councils given this funding – in one lump sum or in tranches?

Further to discussion with some of the Chief Executives, it is my understanding that the money is paid on a monthly basis to councils, with the amount usually set in December.

Councils need firm figures before Christmas, to enable their rate to be struck by the deadline of 15th February. The Minister recently announced an unexpected mid-year cut to this funding, which has caused severe budgeting difficulties for the 18 affected councils.

Just to let you know – we will be writing to the Chair very soon to request a meeting to discuss the unexpected cut to this support.

Regards

**Karen**

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NILGA  
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## **Local Government (Finance) Bill - Draft Committee Amendment**

### **Local Government Finance Bill**

#### **Draft Committee Amendment**

Clause 27, page 10, line 26

At end insert-

'and shall not be reduced during the financial year in question'

## **National Association of Councillors reply re Clause 34 of Local Government (Finance) Bill**

Dear Sean,

as explained to you on the phone the issue for the NAC and indeed others such as NILGA is the auditor can ask the question "Are we as Councillors representing the ratepayers of our

districts when we perhaps have to go to the UK or Republic of Ireland on that associations business?"

We feel that we are representative of our councils when we carry out this duty as we would be nominated by our local authority in the first instance. We as Councillors would wish to have this included in the new Finance Bill.

Yours Sincerely,

Ronnie Ferguson.

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Subject: Local Government Finance Bill  
Date: Fri, 22 Oct 2010 09:55:52 +0100  
From: Sean.McCann@niassembly.gov.uk  
To: ronald.ferguson@hotmail.co.uk

Ronald

At the Environment Committee meeting on 21 October Departmental officials briefed members on the Local Government Finance Bill.

Officials informed the Committee that the NAC asked for an amendment to be made in relation to Clause 34 - Expenses incurred in attending conferences and meetings.

The Committee would like to know the reasons why the NAC asked for this clause to be amended.

I would be grateful if you could reply by Friday 12 November as the Committee is due to discuss the Bill again at its meeting on 18 November.

Thanks

**Sean McCann**

Assistant Clerk  
Environment Committee  
9052 1240

## **CIPFA Comments re Local Government (Finance) Bill**

### **CFO Role to be Strengthened in New Councils**

In October 2009, CIPFA Northern Ireland (NI) made a detailed submission in response to a DOE NI consultation document on the Draft Local Government (Finance) Bill for Northern Ireland. In



its submission, CIPFA NI was extremely critical of Clause 1(2) of the Bill which would allow the Chief Executive of a Council to be its Chief Financial Officer. CIPFA NI argued strongly that each new (Super) Council should have a Finance Director who is a qualified member of a specified accountancy body, and that the role of the Finance Director should not be combined with the role of Chief Executive.

In its response published last week, the Department has now agreed that the role of Chief Executive and Chief Financial Officer will be separated in the new councils and that this will be incorporated in the forthcoming Local Government (Reorganisation) Bill. Each Council will be required to have a fully qualified Director of Finance.

Alan Bermingham, Head of Policy and Technical in CIPFA NI said: "We are delighted that the DOE has responded positively to our submission. This will significantly enhance the power and influence of the finance professional in local government here after decades of being relegated to the fringes in many Councils".

## **CIPFA reply to DOE Consultation on (Finance) Bill**

Julie Broadway  
Local Government Policy Division  
Department of the Environment  
6th Floor, Goodwood House  
44-58 May Street  
Belfast  
BT1 4NN

31 October 2009

Dear Julie

### **The Draft Local Government (Finance) Bill**

On behalf of the Chartered Institute of Public Finance and Accountancy (CIPFA), I am pleased to respond to the consultation document relating to the above Bill.

CIPFA welcomes the Bill as a general "catching up" with the situation as it has evolved here since 1972 and with the position in the remainder of the United Kingdom.

#### **Clauses 1 and 2 – General (Paragraph 11)**

CIPFA is extremely concerned that the Bill proposes to retain the existing poor practice whereby the Chief Executive of the Council is also permitted to be its Chief Financial Officer. We would wish to highlight the fact that Northern Ireland is out of step with best practice and actual practice in other parts of the United Kingdom. In England and Wales, the legislation states that:

"each local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has a responsibility for the administration of those affairs" (Section 151, Local Government Act 1972)

Section 113 of Local Government Finance Act 1988 requires that the officer appointed under Section 151 of the 1972 Act is a member of one of the six recognised Chartered Accountancy Bodies in Great Britain and Ireland.

In addition, Section 114 of the 1988 Act requires a 'Chief Finance Officer' to report to the Council if the authority, one of its Committees or one of its Officers:

- "Has made, or is about to make, a decision which has or would result in unlawful expenditure
- Has taken, or is about to take, an unlawful action which has or would result in a loss or deficiency to the authority or
- Is about to make an unlawful entry in the authority's accounts."

In Scotland, although legislation does not specify that the "proper officer" should be a qualified accountant, in practice all 32 local authorities have a qualified accountant in the post of Chief Financial Officer which is clearly separate from the Chief Executive post.

There are three key principles that CIPFA believes must be observed when considering the need for good financial management within a local authority:

(1) There should be a single Finance Director in each Council who is a qualified member of a specified accountancy body and is vested with the statutory responsibilities and with the relevant strategic and corporate roles set out in CIPFA's Statement on the Role of a Chief Finance Officer

(2) The Finance Director should be a member of the Council's Corporate Management Team to ensure that financial and funding implications are factored into discussions from the outset. The Finance Director should have a parallel right of access to meetings of the Council's political executive for all discussions that have a financial dimension

(3) In order to ensure that there is an appropriate and clearly defined division of responsibilities for the corporate management of a local authority, such that no-one has unfettered powers of decision, the role of the Finance Director should not normally be combined with the role of Chief Executive.

In our opinion, the existing wording in Section 1 of Part 1 of the Bill would result in a situation where a Council would be permitted to adhere to none of these key principles, as is the case in some existing district councils at present.

In Northern Ireland, 23 out of the 26 district councils have designated the Chief Executive as Chief Financial Officer. CIPFA is strongly of the view that there must be a clear separation of roles between the Chief Executive and the Chief Financial Officer. The rationale for this separation of duties is threefold:

(1) It is imperative that each Council has a counterbalance to the Chief Executive – someone of sufficient professional status and standing that he/she can challenge the Chief Executive if policies or proposals are ill thought through or represent poor value for money and who can challenge excess, fraud and/or corruption at the highest levels

(2) The Chief Executive is unlikely to be a qualified finance professional and to designate someone without appropriate skills or qualifications as the Chief Financial Officer is completely inappropriate. This has allowed Councils in the past to relegate finance to a third tier position reporting to say a Director of Corporate Services and results in a Corporate Management Team which is devoid of financial expertise.

Many of the new Councils will have recurring budgets of £60m+ per annum and it is unthinkable that a Council of such size should not have a professionally qualified and suitably experienced Director of Finance who would be a Member of the Corporate Management Team

(3) It is essential that each Corporate Management Team has a qualified Director of Finance on it to ensure that all proposals coming before Council are properly costed and all risks have been assessed; someone who can report to Council on financial management issues and provide the appropriate assurances to Council – also knowing when the Council should be alerted to financial problems.

I enclose an excerpt from a PAC Hearing into Financial Management and Governance at Gwent Tertiary College dating back to 2000 which clearly stated the principle that a Director of Finance should be on the Corporate Management Team.

"27. We asked the Funding Council about the Director of Finance's role within the management structure. The National Audit Office had reported that during the autumn of 1996, senior management at the College took virtually no action to address the looming deficit, and that a relevant factor was likely to have been that the Director of Finance was not a member of the Corporate Management Team until December 1996. The Corporate Management Team thus had nobody within its membership with an accounting background.[39] The Funding Council confirmed that they would have expected the Director of Finance to be part of the Corporate Management Team."

In our opinion, each Council should be required to have a Chief Financial Officer who should be:

- A key member of the Corporate Management Team, helping it to develop and implement strategy and to resource and deliver the Council's strategic objectives sustainably and in the public interest
- Actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, and alignment with the Council's financial strategy and
- Leading the promotion and delivery by the whole Council of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently and effectively.

To deliver these responsibilities, we believe the Chief Financial Officer:

- Must lead and direct a finance function that is resourced to be fit for purpose
- Must be professionally qualified and suitably experienced and
- Should not be the Chief Executive, even when the Chief Executive is a qualified accountant.

## **Clauses 11-16 – Borrowing**

CIPFA welcomes the more liberal regime for Councils in relation to borrowing and also the requirement to comply with the Prudential Code which brings Northern Ireland into line with the rest of the United Kingdom.

I hope that these comments are helpful.

Yours sincerely

David Nicholl  
Head of CIPFA Northern Ireland  
T: 028 9026 6770  
Email: [david.nicholl@cipfa.org.uk](mailto:david.nicholl@cipfa.org.uk)